S. Hrg. 99-173

NOAA OCEAN PROGRAMS AUTHORIZATIONS AND CZM ACT

HEARING

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 959

TO AMEND THE COASTAL ZONE MANAGEMENT ACT OF 1972 TO PROVIDE AUTHORIZATION OF APPROPRIATIONS, AND FOR OTHER PURPOSES

S. 990

TO CONSOLIDATE AND AUTHORIZE PROGRAM SUPPORT AND CERTAIN OCEAN AND COASTAL PROGRAMS AND FUNCTIONS OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION UNDER THE DEPARTMENT OF COMMERCE

MAY 3, 1985

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NOAA OCEAN PROGRAMS AUTHORIZATIONS AND CZM ACT

FRIDAY, MAY 3, 1985

U.S. Senate,
Committee on Commerce, Science, and Transportation,
National Ocean Policy Study,
Washington, DC.

The committee met, pursuant to notice, at 10:19 a.m., in room SR-253, Russell Senate Office Building, Hon. Theodore F. Stevens presiding.

Staff members assigned to this hearing: Bob Eisenbud, staff counsel and Mike Nussman, minority professional staff member.

OPENING STATEMENT BY SENATOR STEVENS

Senator Stevens. We will now turn to the second hearing scheduled for this committee. It is a hearing of the National Ocean Policy Study and the full committee on S. 959 and S. 990.

Senators Danforth, Packwood, Gorton, Hollings, and I introduced S. 959 to reauthorize the Coastal Zone Management Act for 5 years. It imposes a freeze on spending under the act, capping the fiscal year 1986 authorization level at the fiscal year 1985 appropriations level and allowing a 4.5-percent increase during the succeeding years.

S. 990, which I have also introduced with Senators Danforth, Packwood, and Gorton, reauthorizes the important NOAA Oceans and Coastal Programs and authorizes program support for 2 years.

It also imposes a freeze on the fiscal year 1986 spending and allows a 4.5-percent increase for fiscal year 1987.

Both bills reflect the commitment of our committee to maintaining these essential programs, while exercising fiscal constraint to bring Federal spending under control.

While the dominant concern of this reauthorization hearing is the appropriate spending levels, we are, of course, interested in reviewing the operations of the statutory programs before the committee and considering any changes in those programs that appear necessary at this time.

We look forward to the testimony of the witnesses today.

We are going to begin with the testimony of Mr. Paul Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA, who we will ask to address both bills.

We will then have an opportunity to hear the testimony on S. 959, relating to the Coastal Zone Management Act from Mr. Richard Delaney on behalf of the Coastal States Organization; Commissioner Alison Fahrer, of Monroe County, FL; Mr. Harry Longwell of the Exxon Co.; and Sarah Chasis of the Natural Resources Defense Council.

We will have other statements that we will refer to the record at the appropriate time.

Do you have an opening statement, Senator?

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Yes, Mr. Chairman.

I simply want to agree with you in expressing the need to reauthorize the Coastal Zone Management Act to sustain a national program for the management, protection, and development of our coastal areas.

Mr. Chairman, we need to reauthorize the Coastal Zone Management Act of 1972 to sustain a national program for the management, protection and development of our coastal areas. The act established a voluntary, two-staged grant assistance program. The first stage, now completed, provided grants to States to set up Coastal Zone Management (CZM) programs using Federal guidelines. I might note that Washington State, in 1976, was the first State with an approved CZM program. I also would like to add that 28 States are CZM participants, covering 90 percent of the Nation's marine and Great Lakes coastline. The second stage provides grants to States to enact their federally approved CZM programs.

S. 959, sponsored by Senators Danforth, Packwood, Stevens, Holings, and myself, reauthorizes the Coastal Zone Management Act for 5 years, and in fiscal year 1986 it authorizes the act at the fiscal year 1985 appropriation level. This is in line with the budget resolution reported out by the Budget Committee, on which I also serve. The administration's original budget proposal would have eliminated funding for grants to States, and contemplated that States could and would assume all the cost of their respective programs. I expect that those of you representing the coastal States will testify to the contrary.

Reauthorization of the CZMA is particularly important to Washington State to carry out the State's Shoreline Management Act and thus foster our efforts to enhance the management of Puget Sound. I am pleased to be a cosponsor of S. 959, and I will support my chairman in reauthorizing the Coastal Zone Management Act.

Senator STEVENS. Thank you very much, Senator Gorton.

We have a statement from Senator Packwood and another statement from Senator Hollings, along with the two bills which will be printed in the record at this point.

OPENING STATEMENT BY SENATOR PACKWOOD

Mr. Chairman, as a cosponsor of S. 959, I want to thank you for holding today's hearing and commend Senator Danforth for introducing this legislation.

The Coastal Zone Management Act is as important today as when Congress twice reauthorized it in the past. Even though my own state of Oregon and 27 other states already have acknowledged coastal zone management programs pursuant to the Act, a great deal of work remains to be done.

Under the Act, the coastal states have developed programs which provide both for conservation and use of coastal zones and resources. One impetus for this activity has been the Act's provisions giving coastal states an opportunity to influence federal activities which are conducted, supported, licensed, or permitted in, or which affect, the coastal zone.

I commend Senator Danforth for this sensible approach to reauthorizing the Act's funding level. Continuing its programs for five years starting at the 1985 level, with a small annual increase thereafter, is fiscally sound and complements our ongoing struggle to reduce the federal budget deficit. At the same time, I would welcome an inquiry into further reductions in the federal commitment without jeopardizing the efficacy or success of existing or future state coastal zone management programs.

CONSISTENCY

One issue which this legislation does not address is last year's Supreme Court decision in *Watt* v. *California*. In that case, the Court held that Section 307(c)(1) of the Act, required consistency between federal activities on the outer continental shelf and state coastal management programs, and does not apply to oil and gas lease sales on the outer continental shelf. I firmly believe that this decision misreads both the plain language of the Act and its legislative history. In the 98th Congress, a majority of the Commerce Committee agreed with me by passing S. 2324, which would have reversed the high court's decision.

Mr. Chairman, yesterday I reintroduced legislation identical to S. 2324. Since it amends the Coastal Zone Management Act, my bill would be appropriate to offer as an amendment during next week's markup of the reauthorization bill before us today. However, I do not intend to ask for committee consideration unless the Act's remaining consistency provisions, untouched by *Watt* v. *California*, are the subject of weakening amendments. Mr. Chairman, states' rights and federal authority were carefully balanced when the Coastal Zone Management Act was first enacted by Congress in 1972. The Act has worked well to ensure that both conservation and develoment of near-shore and off-shore waters occurred under the watchful eye of the directly affected states and the federal government. I urge those who might be tempted, not to upset the present well conceived legislative scheme.

Opening Statement by Senator Hollings

Mr. Chairman, as you know, the Administration has proposed dramatic reductions to a number of programs we are reviewing today, including th complete termination of the Coastal Zone Management's State Assistance Program. In my opinion, these reductions are both unwise and unnecessary. The bills that we are discussing today, S. 959 and S. 990, will allow us to continue the programs that we in the past have judged so vital. At the same time, it is consistent with the bipartisan budget freeze that I have proposed along with Senators Andrews, Exon, and Stennis.

I think it is particularly important to point out the value of the Coastal Zone Management Act to our Nation. This Act provides the comprehensive planning tool needed to cope with the phenomenal population growth in our coastal areas. In my home state of South Carolina, we have seen a 300 percent rise in the number of coastal permits and certifications during the last 4 years. This pressure will only increase in the future. For this reason, it is vital that we continue with our commitment to the management of our valuable coastal resources.

I look forward to this discussion and want to thank the witnesses for their participation.

II

99TH CONGRESS
1ST SESSION

S. 959

To amend the Coastal Zone Management Act of 1972 to provide authorization of appropriations, and for other purposes

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IN THE SENATE OF THE UNITED STATES

APRIL 18 (legislative day, APRIL 15), 1985

Mr. DANFORTH (for himself, Mr. PACKWOOD, Mr. GORTON, Mr. STEVENS, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Coastal Zone Management Act of 1972 to provide authorization of appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended—

(1) in paragraph (4), by inserting "; not to exceed $1,000,000 for the fiscal year ending September 30, 1986; not to exceed $1,045,000 for the fiscal year ending September 30, 1987; not to exceed $1,092,025 for the fiscal year ending September 30, 1988; not to exceed $1,141,166 for the fiscal year ending Septem-

ber 30, 1989; and not to exceed $1,192,519 for the fiscal year ending September 30, 1990" immediately after "1985";

(2) in paragraph (5), by inserting "; not to exceed $2,930,000 for the fiscal year ending September 30, 1986; not to exceed $3,061,850 for the fiscal year ending September 30, 1987; not to exceed $3,199,633 for the fiscal year ending September 30, 1988; not to exceed $3,343,617 for the fiscal year ending September 30, 1989; and not to exceed $3,494,079 for the fiscal year ending September 30, 1990" immediately after "1985";

(3) in paragraph (6), by (A) inserting "; not to exceed $3,275,000 for the fiscal year ending September 30, 1986; not to exceed $3,422,375 for the fiscal year ending September 30, 1987; not to exceed $3,576,382 for the fiscal year ending September 30, 1988; not to exceed $3,737,319 for the fiscal year ending September 30, 1989; and not to exceed $3,905,498 for the fiscal year ending September 30, 1990" immediately after "1985", and (B) by striking the period at the end and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(7) such sums, not to exceed $36,000,000 for the fiscal year ending September 30, 1986; not to exceed $37,620,000 for the fiscal year ending September 30, 1987; not to exceed $39,312,900 for the fiscal year ending September 30, 1988; not to exceed $41,081,980 for the fiscal year ending September 30, 1989; and not to exceed $42,930,669 for the fiscal year ending September 30, 1990, as may be necessary for grants under sections 306 and 306A, to remain available until expended.".

SEC. 2. Section 15(c) of the Coastal Zone Management Act Amendments of 1976 (Public Law 94-370; 90 Stat. 1032) is repealed.

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II

99TH CONGRESS
1ST SESSION

S. 990

To consolidate and authorize program support and certain ocean and coastal programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce.

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 15), 1985

Mr. DANFORTH (for himself, Mr. PACKWOOD, Mr. GORTON, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To consolidate and authorize program support and certain ocean and coastal programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Oceanic and Atmospheric Administration Program Support Authorization Act".

TITLE I—PROGRAM SUPPORT

EXECUTIVE DIRECTION AND ADMINISTRATION

SEC. 101. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its executive direction and administration duties under law, $47,954,000 for fiscal year 1986 and $50,111,930 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to executive direction and administration specified by the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857-1 et seq.), and any other law involving such duties. Such duties include management, administration support, retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development.

MARINE SERVICES

SEC. 102. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its marine services duties under law, $64,886,000 for fiscal year 1986 and $67,805,870 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to marine services specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include ship operations, maintenance, and support.

AIRCRAFT SERVICES

SEC. 103. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its aircraft services duties under law, $12,744,000 for fiscal year 1986 and $13,317,480 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to aircraft services specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), and any other law involving such duties. Such duties include aircraft operations, maintenance, and support.

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

SEC. 104. For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under the National Advisory Committee on Oceans and Atmosphere Act of 1977 (33 U.S.C. 857-13 et seq.), there are authorized to be appropriated to the Department of

Commerce $630,000 for fiscal year 1986 and $658,350 for fiscal year 1987.

TITLE II—SELECTED OCEAN AND COASTAL PROGRAMS

OCEAN DUMPING RESEARCH

Sec. 201. For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), there are authorized to be appropriated to the Department of Commerce $10,635,000 for fiscal year 1986 and $11,113,575 for fiscal year 1987.

NATIONAL OCEAN POLLUTION PLANNING ACT OF 1978

Sec. 202. For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), there are authorized to be appropriated to the Department of Commerce $3,571,000 for fiscal year 1986 and $3,731,695 for fiscal year 1987.

AUTHORIZATION OF APPROPRIATIONS

Sec. 203. (a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its nonliving marine resource duties under law, $2,000,000 for fiscal year 1986 and $2,090,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to nonliving marine resources specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include research, development, and licensing responsibilities pertaining to ocean thermal energy conversion and the seabed mining of manganese nodules, and polymetallic sulfide analyses and research.

(b) The authorization provided for under subsection (a) shall be in addition to moneys authorized under the Deep Seabed Hard Minerals Resources Act (30 U.S.C. 1401 et seq.), and the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), for the purpose of carrying out such duties relating to nonliving marine resources.

OCEAN RESEARCH

SEC. 204. (a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its ocean research duties under law, $28,471,000 for fiscal year 1986 and $29,752,195 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to ocean research specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include undersea marine resources, air-sea interaction, and ocean and Great Lakes environmental research.

(b) The authorization provided foı under subsection (a) shall be in addition to ocean research moneys authorized under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) for the purpose of carrying out such duties relating to ocean research.

OCEAN SERVICES

SEC. 205. (a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its ocean service duties under law, $20,314,000 for fiscal year 1986 and $21,228,130 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to ocean services specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 882a et seq.), and any other law involving such duties. Such duties include coordination of interagency research in ocean dumping and marine pollution, and provision of tide and current data for the safe and efficient use of the oceans and Great Lakes by government, commerce, and the private sector.

(b) The authorization provided for under subsection (a) shall be in addition to moneys authorized under the Marine

Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), for the purpose of carrying out such duties relating to ocean services.

MAPPING, CHARTING, AND GEODESY

SEC. 205. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its mapping, charting, and geodesy duties under law, $50,474,000 for fiscal year 1986 and $52,745,330 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to mapping, charting, and geodesy specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include aeronautical and nautical mapping and charting activities, and geodetic data collection and analysis.

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Senator STEVENS. Mr. Wolff, I understand that you are accompanied by Peter Tweedt, is that right?

Mr. WOLFF. Mr. Tweedt is here. Yes, sir.

Senator STEVENS. Thank you very much.

We are happy to have your statement.

STATEMENT OF PAUL M. WOLFF, ASSISTANT ADMINISTRATOR FOR OCEAN SERVICES AND COASTAL ZONE MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY PETER TWEEDT, DIRECTOR, OFFICE OF COASTAL RESOURCE MANAGEMENT

Mr. WOLFF. Thank you, Mr. Chairman.

We have entered our testimony earlier this week and, with your permission, I would like to read a brief summary of it.

Senator STEVENS. Your full statement will be printed in the record. We would be happy to have your summary.

Mr. WOLFF. Thank you.

Mr. Chairman, members of the committee, I am pleased to appear before you to testify on reauthorization of the Coastal Zone Management Act and other ocean and coastal statutes administered by the National Oceanic and Atmospheric Administration.

I would like to outline briefly some of our current ocean and coastal activities and plans for 1986.

COASTAL ZONE MANAGEMENT

The administration has sent to Congress proposed legislation to reauthorize section 315, estuarine sanctuary grants, and section 318(6), Federal program management, of the Coastal Zone Management Act at levels of $1.28 million and $2,603,000, respectively, for a 3-year period.

We do not seek reauthorization of section 306: State Program Administration Grants; section 306A: Resource Management Improvement Grants; section 309: Interstate Grants; nor section 308: Coastal Energy Impact Program Grants and Loans.

MAPPING AND CHARTING

We expect to issue 2.4 million copies of nautical charts in fiscal year 1986 and to conduct 26 hydrographic field surveys for upgrading and revising charts.

Over 10,000 different aeronautical charts also will be maintained and issued.

NOAA is asking Congress for legislative authority to increase fees charged to the public for nautical and aeronautical maps and charts in order to recover more of the costs for production as a part of the administration's effort to increase user fees for a service which provides special benefits to identifiable recipients.

Existing law now limits cost recovery from the public for our charts to printing and distribution costs. When fully implemented, the proposal still will result in the recovery only of about 60 percent of the costs for producing nautical charts.

NOAA mapping efforts also include a program in collaboration with the U.S. Geological Survey to systematically survey the U.S.

Exclusive Economic Zone, to produce bathymetric maps and corresponding data sets of the offshore regions.

OCEAN SERVICES

NOAA has been actively unifying its programs providing marine products and services in order to improve the collection of ocean data, the preparation of national and regional oceanic products, and the delivery of these products to the public and industry.

NOAA is focusing its role on observation, data collection, ocean product preparation and providing advisory and warning information.

We will concentrate our regional efforts on improving marine advisories and warnings.

NOAA will work closely with private sector firms for development of specialized value-added products and services.

Our circulation program is being redirected from a field survey effort to the application of numerical models to produce real time and current and water level information. Efforts with local participation are underway in Delaware Bay and Miami and are planned for Cook Inlet, Boston, and Charleston.

In 1986, we also plan to begin replacing the obsolete systems operating in the national tide and water level network with modern systems. When fully installed, they will reduce the labor and costs to provide products and services and make them available sooner.

OCEAN ASSESSMENTS

NOAA's ocean assessment activities range from long-term monitoring of national marine environmental quality to real-time tactical advice during onscene Federal responses to spills of hazardous materials.

Under title II of the Marine Protection, Research, and Sanctuaries Act, the Department of Commerce is responsible for monitoring and research on the effects of dumping material into the ocean or coastal waters, and a program of research on the long-range effects of pollution, overfishing, and other changes in ocean systems.

NOAA proposes reauthorization for 2 years with funding of $4.835 million for fiscal year 1986 and such sums as may be necessary for fiscal year 1987.

NOAA also has statutory responsibility under the Ocean Pollution Planning Act to coordinate Federal marine pollution research development and monitoring programs and to disseminate the information and results from these programs. We support the reauthorization of NOPPA for 2 years, with funding at $3.567 million for fiscal year 1986, and such sums as necessary for fiscal year 1987.

OCEAN RESEARCH

We carry out research to improve our understanding and prediction of the marine environment. Our program includes study of the relationship between ocean dynamics and large-scale air-sea interactions through the international Tropical Ocean Global Atmosphere Program, TOGA, and the Subtropical Atlantic Climate Studies Program.

Research is also conducted to improve understanding and capability to predict phenomena important to marine warning and forecasting. It stresses the development of improved prediction models and observational techniques, especially remote sensing to improve prediction accuracy in the atmosphere and ocean.

In fiscal year 1986, NOAA plans to initiate fisheries-oceanography coordinated investigations to understand and predict the effects of environmental variability on fisheries resources. Initial attention will be on Alaska pollock.

NOAA FLEET AND AIRCRAFT SERVICES

The ships of the NOAA fleet provide our seagoing capability to acquire data and information in support of our programs and those of other organizations.

During fiscal years 1986 and 1987, the acquisition of two multibeam bathymetric survey systems is proposed as the most expensive item in a program of ship equipment modernization.

The use of our ships has recently been reevaluated. There is no further need for circulation surveys of estuaries, as was done by the ship *Ferrel,* after this year. Most of our hydrographic survey requirements for the east coast also can be accomplished by field parties or contract surveys. Thus the need for survey ships is reduced.

Reimbursable agreements can be developed with other Federal agencies requiring ships, as was done with the Navy for the use of the Mount Mitchell.

The NOAA fleet of 12 aircraft will fly an estimated 3,700 flight hours in fiscal year 1986 in support of research and operational activities.

Mr. Chairman, this concludes my statement.

I will attempt to answer any questions that you or members of the committee may have. Thank you.

Senator STEVENS. Thank you.

I am not going to berate you for a position taken by the Department in furtherance of the budget concepts. But I do think that we ought to know a little bit more about what you are planning.

For instance, your national plan, which you described in your statement—the statement that is in the record and not the one you just read—as I understand it, does not rank the problem of phantom fishnets and similar debris at sea as a major national problem. And yet, I think Congress has repeatedly expressed the point of view that it is a major problem.

We have, in the North Pacific, now some rather unfortunate experiences over a period of years with phantom nets and other debris. Staff tells me that we have had just one example of 50,000 fur seals being killed by such debris in one year. That is more than was allowed to be harvested under the treaty.

We would like to know why that is not a priority. Would you tell us what funds you are prepared to dedicate to the problem of these phantom fishnets and ocean debris that present such hazards, not only to fish, birds, and mammals, but also to vessels themselves. Many of them are disabled by getting entangled in these fishnets.

What is your program for that area?

Mr. WOLFF. There is none that I know of, Senator.

It would have to be addressed as a combined effort between the marine pollution group that is in my office and the fisheries group under Mr. Gordon.

We would be glad to respond in writing with an assessment of what is needed in the area.

Senator STEVENS. We would like to have you submit not only an assessment but some idea of what you intend to do about it. Otherwise, we will have the task of formulating a program in the legislation itself and directing you to do something about it.

We would like to have that as soon as possible. I think this is the No. 1 problem of the fisheries of the Pacific and probably of the rest of the oceans. I am just more familiar with the North Pacific and the Pacific down off the west coast. I think it must be a similar problem elsewhere.

[The following information was subsequently received for the record:]

In November 1984 the National Marine Fisheries Service convened an international workshop in Honolulu, Hawaii, to identify possible problem areas and investigate avenues of research. A publication from this meeting is due out in June, 1985.

The NMFS action plan was approved on February 8, 1985, at a meeting of NMFS, the Marine Mammal Commission, and representatives of concerned environmental groups, and congressional staff.

(B) What funds will be or are available to address this (p. 13, L. 19 & 20) problem?

See attached letter to John R. Twiss, Jr., Executive Director of the Marine Mammal Commission.

(C) Why hasn't addressing the entanglement problem been more of a priority?

Entanglement has been given a priority. It was agreed by NMFS and MMC that the results of the Honolulu workshop would be the primary guidance used in implementing entanglement studies. Even though the results of the workshop will not be ready until June, the NMFS has used draft material to formulate its spending plan. At this time we are awaiting the MMC's concurrence (required by the Act) of our proposal.

Senator STEVENS. With regard to the study you mentioned about Alaska pollock, can you give us some idea when that is going to get underway and how much you are going to allocate to it, and whether the funds have been released now by the OMB?

Mr. WOLFF. The plan covers fiscal years 1985 and 1986. It is being directed by the research office in cooperation with the Fisheries and the National Ocean Services.

What we found is that the pollock spawn in an area off Shelikof Strait where, depending upon the direction of the wind, the temperature of the water can vary by 3 or 4 degrees Centigrade; and also, if the wind is from one direction, the fish larvae, in their very early stages, are dispersed. So, the thesis that we are investigating is when they are dispersed, this will lead to a diminished year class for pollock, and when the wind is not from this direction and the wind is not severe, then this will be followed by a good year class for pollock. Since pollock is of very great dollar value to the Northwest fisheries at the present time, we are devoting efforts from our base program and from our ships in order to study this phenomenon intensively in the next 2 years.

We hope the outcome of this will be a prediction system which would enable us to determine the recruitment of the year classes of pollock, so that we could regulate the fisheries, if necessary, in case there were disastrous environmental conditions during these few weeks, when the larvae are subject to environmental conditions.

This is the outline of the program. It is being handled with base funds mainly this year.

I can provide you with a statement of the total funding.

Senator STEVENS. We would like to have that.

[The following information was subsequently received for the record:]

The Shelikof Strait is one of the major spawning areas for walleye (Alaska) pollock—which consistently ranks first or second in the world's catch by volume. During 1983, about 130,000 metric tons [mt] were caught in Shelikof Strait alone. Research to date indicates that the spawning of pollock and the subsequent drift of egg and larvae from the Shelikof spawning event follow a consistent pattern from year to year. For example, in 1981, the Northwest and Alaska Fishery Center located a single spawning concentration in western Shelikof Strait that contained an estimated 800,000 mt of pollock—this spawning mass was restricted in time (March-early April) and localized geographically in an area about 50 by 115 km. The eggs, and later the larvae (which remain planktonic for about 6-8 weeks), form a large patch that drifts with the prevailing current to the southwest along the Alaska Peninsula. The well-defined spatial and temporal nature of this early life history pattern, in a relatively confined oceanographic setting, lends itself ideally to recruitment studies like FOCI which are designed to understand the biological and environmental factors which affect the transport and/or survival of eggs and larvae.

The $3,000,000 Fisheries-Oceanography Coordinated Investigations [FOCI] initiative proposed in the fiscal year 1986 budget will enable NOAA to begin a concentrated program of research on Alaska walleye pollock. During fiscal year 1983, fiscal year 1984 and fiscal year 1985 NOAA has used NMFS, OAR and Office of the Administrator funds to support a low-level effort (totalling approximately $100,000-$200,000/year) to assess the FOCI concept and develop specific testable on the environmental factors which affect walleye pollock recruitment. The proposed redirection of $3,000,000 will allow us to begin testing those hypotheses.

Senator STEVENS. You are not now talking about earmarking the $600,000 which the Congress added to the budget last year for the purpose of baseline studies of the North Pacific, of earmarking that solely for pollock studies—are you?

Mr. WOLFF. No sir.

Senator STEVENS. Are you convinced from your research, are you sufficiently informed about it to tell us whether or not that reference to the Shelikof Strait indicates that that is the sole area for the reproduction of pollock?

Mr. WOLFF. That is the current theory, yes, sir, that all of the larvae are collected there in an area of only a relatively few square miles, right along the coast.

Senator STEVENS. Information was just presented to our offices that a portion of that reproduction took place in Bristol Bay. That was one of the reasons for the opposition to the North Aleutian Shelf proposed lease sale for OCS activities, emanating from the Pacific coast fishermen.

Are you aware of that?

Mr. WOLFF. No, sir.

But this program was put together by Dr. Fletcher, who is in charge of the Reserarch Program for NOAA, and by Mr. Gordon in fisheries. So my role in it has been to provide the ship support. So I am not the best witness on this particular element. Mr. Gordon would be.

Senator STEVENS. Mr. Wolff, your original statement indicated that you believed that the States were ready to assume funding for the coastal zone management activities that they have undertaken in the last 11 years.

What evidence do you have that that is true? Has there been any increase in spending by the States beyond the moneys that were provided by the Federal Government in recent years?

Mr. WOLFF. I think the State spending on coastal zone management has been increasing, but the program has been going on for a number of years. Included in it has been at least one attempt at a phaseout of the Federal participation. The Federal funding which was level at about $35 to $40 million has decreased somewhat since 1981. But it has increased again this year. With that much notice, the States should be able to assume a larger share of the funding since it is relatively small amount of money compared to the size of the total State budgets.

Senator STEVENS. Do you feel the State legislators would appropriate funds for State officials to comply with Federal law without any Federal funding?

Mr. WOLFF. I don't know.

Senator STEVENS. That's a good answer.

Would you give the committee information as to the programs and activities which would be discontinued in order to achieve the reduction that was indicated in your prepared statement, please. The reduction that I am talking about is the lower authorization level that is proposed. We would like that for the record. What specific programs and activities would be discontinued or reduced in order to meet that lower level.

Mr. WOLFF. I would like to provide that in writing.

Senator STEVENS. Yes.

Thank you very much.

[The following information was subsequently received for the record:]

COASTAL ZONE MANAGEMENT PROGRAM

Section 315, Estuarine Sanctuary Grants—Seventeen estuarine sanctuaries will have been designated by the end of this fiscal year. The focus of the program has shifted from acquisition and toward accomplishments at existing sanctuaries. NOAA is now giving priority to completion of acquisition in these seventeen sites and to implementation of effective research and interpretive programs in each sanctuary.

Section 318(6), Federal Program Management—The requested authorization level is adequate for the amount of administrative duties required for the remaining ongoing Coastal Zone Management Programs.

Section 306, State Program Administration Grants; section 306A, Resource Management Improvement Grants; section 309, Interstate Grants; and section 308, Coastal Energy Impact Program Grants—We believe that the Federal Government has met its funding obligation to the states for the development and implementation of CZMA programs through the expenditure of over one half billion dollars since fiscal year 1974. In 1979, the Congress phased out section 305 program development funds. In a like manner, we believe the time has come to phase out Federal funds now that twenty-eight state programs have received approval.

OCEAN ASSESSMENTS

No programs will be reduced or terminated as a result of the proposed authorization levels under sections 201 and 202 of Title II of the Marine Protection, Research, and Sanctuaries Act and the National Ocean Pollution Planning Act.

Senator STEVENS. Senator Gorton.

Senator GORTON. No questions, thank you.

Senator STEVENS. Do you have any further statement to make, sir?

Mr. WOLFF. No, sir.

Senator STEVENS. Mr. Tweedt, do you have any statement?

Does your associate have any statement?

Mr. TWEEDT. No; I do not.

Senator STEVENS. Then thank you very much. We appreciate your testimony.

Mr. WOLFF. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF PAUL M. WOLFF, ASSISTANT ADMINISTRATOR FOR OCEAN SERVICES AND COASTAL ZONE MANAGEMENT, NOAA

Mr. Chairman, and members of the committee, I am pleased to appear before you to testify on reauthorization of the Coastal Zone Management Act [CZMA] and other ocean and coastal statutes administered by the National Oceanic and Atmospheric Administration [NOAA].

NOAA's ocean and coastal activities encompass a number of the activities conducted by the National Ocean Service [NOS] and the Office of Oceanic and Atmospheric Research [OAR]. These efforts include programs in coastal zone management; mapping and charting; ocean services, which range from technical products for safe navigation to assessments of the impacts of man's activities on ocean and coastal environments; ocean research; and the operation of the NOAA fleet and aircraft services. I would like to outline briefly some current activities in these areas and our plans for FY 1986.

COASTAL ZONE MANAGEMENT

The Administration has sent to Congress proposed legislation to reauthorize Section 315 (Estuarine Sanctuary Grants), and Section 318(6) (Federal Program Management) of the CZMA for a three-year period. The legislation provides that the authority to make grants under Section 306 (State Program Administration Grants), Section 306A (Resource Management Improvement Grants), and Section 309 (Interstate Grants) shall expire on September 30, 1985. We do not seek reauthorization of Section 308 (Coastal Energy Impact Program Grants and Loans).

CZMA implementation during the past 11 years has been successful. When the Act was reauthorized in 1980, 19 states had Federally-approved programs. State structures are now in place to deal with coastal issues and implement effectively coastal management programs. Federally-approved CZM programs have been instituted in 28 of the eligible 35 coastal states and territories, covering over 90 percent of the 95,000 mile coastline of the United States.

We believe the states, having had sufficient notice, and having received Federal CZM funds over the past 11 years are ready to assume funding of this program as they deem appropriate to address their coastal management concerns. We will meet the Federal commitment by continuing to monitor and evaluate these programs to assure that they continue to meet CZMA requirements and will provide necessary technical assistance and coordination on consistency and other coastal issues.

Section 315 (the National Estuarine Sanctuary Program) provides 50 percent matching grants to states for acquisition, development and operation of national estuarine sanctuaries. These sanctuaries provide natural field laboratories to study and gather data concerning the natural processes and effects of human activities occurring within the coastal zone estuaries. Currently 15 national estuarine sanctuaries have been designated. A decrease of $1,650,000 from the current level of $2.93 million to a level of $1.28 million for the next three years is proposed. The remaining funds are sufficient to provide for a phased acquisition of one new site per year, to support sanctuary operations and conduct research in these sanctuaries.

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 authorizes the Secretary of Commerce to designate marine sanctuaries in ocean waters to preserve their values for future generations. The program objectives are to protect special marine areas characterized by distinctive resources and human values, and to provide comprehensive geographically-focused management for each site. The nomination and designation procedures for new sanctuaries have been refined, resulting in a site evaluation list, a core pool of special areas meeting specified criteria, from which sites will be selected for further evaluation in the future as active candidates for designation. During fiscal year 1985, two new areas will be designated, bringing the system to a total of eight sites. During fiscal year 1985 and fiscal year 1986, two additional areas will be under active consideration for designation as National Marine Sanctuaries. NOAA is requesting $2.215 million for this program for fiscal year 1986.

MAPPING AND CHARTING

NOAA provides accurate nautical charts and related marine navigation information for 2.5 million square miles of our ocean and coastal waters. We expect to issue 2.4 million copies of the 970 different nautical charts maintained in fiscal year 1986. Twenty-six hydrographic field surveys are planned for upgrading and revising charts to improve navigational safety. NOAA also provides aeronautical charts for the National Airspace System and certain international airways, which provide air navigation data and flight regulation information for use by private, corporate, commercial and military pilots, as well as air traffic controllers, airport operators, and Federal Aviation Administration [FAA] management. The program maintains and issues over 10,000 different charts, of which 9,000 are updated and issued ever 56 days. In fiscal year 1986, 350 new charts will be compiled, and 8,700 will have minor revisions.

NOAA is asking Congress for legislative authority to increase fees charged to the public for nautical and aeronautical maps and charts in order to recover more of the costs for production. Existing law now limits cost recovery from the public for our charts to printing and distribution costs.

It now costs NOAA about $25 to produce a nautical chart that is sold to the public for $5.50. The plan is to increase the sale price to $14.00 over a three-year period to more closely reflect production costs and market values. When fully implemented the proposal still will recovery only about 60 percent of the costs for producing nautical charts. Data acquisition costs will continue to be funded from general revenues. Charges for aeronautical charts, which are based on data received directly from FAA, will be increased to cover production costs.

At the end of the initial three-year period of enactment of the legislation, the Secretary of Commerce would report to the Congress on the effects of the increased cost recovery on marine and air safety, if any. The Secretary may then propose additional legislation to further adjust the prices of these products.

This proposal is part of the Administration's effort to increase user fees where a service provides special benefits to identifiable recipients beyond those which accrue to the general public. It is in line with trends in other Federal agencies and is designed to gauge the price sensitivity of users and the pace at which the private sector will enter the market. Comparable cost recovery from chart sales to other Federal agencies is planned through direct reimbursable transfer of funds beginning in fiscal year 1986.

To increase our chart production efficiency, we instituted this year a Survey Tracking and Reporting [STAR] system to schedule and manage chart production from initial surveys to distribution of the published chart. We expect to significantly reduce the average production time and better utilize our labor force with this system.

NOAA in collaboration with the U.S. Geological Survey [USGS], also initiated a program last year to systematically survey the U.S. Exclusive Economic Zone [EEZ]. This effort is intended to produce bathymetric maps and corresponding data sets of off-shore regions utilizing state-of-the-art multibeam survey systems. NOAA is conducting such surveys for priority areas of the west coast EEZ identified by the USGS. We expect to work in these areas through fiscal year 1986 when other priority areas will be identified.

OCEAN SERVICES

NOAA has been actively unifying its programs providing marine products and services in order to improve the collection of ocean data, the preparation of national and regional oceanic products, and the delivery of these products to the public and industry. Our objective is to increase marine warning services and strengthen industry's role in providing ocean products and services to the public and private sectors.

Under the current plan for Ocean Service Centers, NOAA will deliver ocean data products through the existing regional offices in Seattle and Anchorage.

NOAA will work closely with private sector firms, using the national and regional data and products, to encourage their development of specialized "value-added" products and services for sale to particular clients.

By focusing the government's [NOAA's] role to that of observation, data collection, national product preparation and providing advisory and warning information, NOAA will be able to concentrate its regional efforts on improving marine advisories and warnings. The private sector in joint partnership with the government can then assume responsibility for marketing and disseminating ocean products free of government competition. We believe this approach will foster a partnership with private industry resulting in improved products to users while reducing the finanical burden to the government.

NOAA's ocean service efforts also include acquiring, analyzing and disseminating oceanographic data, including tide and water levels and currents and circulation, required for safe, rational, effective, and economic use of the oceans and coastal zone. Our circulation program is being redirected from a field survey effort to the application of numerical models to produce current and water level information. The Delaware River and Bay has been selected as a pilot project and a numerical model has been developed for that area. It is being operated with observed data to provide real-time and predicted currents and water levels. A Memorandum of Agreement has been concluded with the Delaware River and Bay Pilots Association to provide an evaluation of this system. Similar efforts with local participation are underway in Miami, and are planned for Cook Inlet, Boston and Charleston.

In 1986, we also plan to begin replacing the obsolete systems operating in the National Tide and Water Level Network with modern systems, from sensors through the dissemination of products and services. Prototype systems are being acquired and tested this year, and funds are included in the FY 1986 request to begin procurement for replacement units. When fully installed, the Next Generation Water Level Measurement System [NGWLMS] will reduce the labor and costs to provide products and services and make them more readily available.

OCEAN ASSESSMENTS

NOAA's ocean assessment activities range from long-term "strategic assessments" of national marine environmental quality issues it real-time "tactical" advice during on-scene Federal responses to spills of hazardous materials.

Under Section 201 of Title II of the Marine Protection, Research, and Sanctuaries Act, the Department of Commerce is responsible for a comprehensive and continuing program of monitoring and research on the effects of dumping material into ocean or coastal waters. Section 202 of Title II further directs the Secretary of Commerce, in consultation with other agencies, to initiate a comprehensive program of research on long-range effects of pollution, overfishing, and other anthropogenic changes in ocean ecosystems.

NOAA supports reauthorization of Title II in order that it may continue in this role and facilitate the balanced use of our ocean and coastal waters. We are proposing reauthorization for two years, with funding at $4.835 million for fiscal year 1986, and such as may be necessary for fiscal year 1987.

During the past two years the program has been refocused to: (1) develop a national context for the analysis of marine environmental quality problems; (2) emphasize environmental quality assessment and monitoring efforts in coastal and estuarine areas, rather than in the open ocean; (3) focus support primarily on direct measurements and analyses of the pollutants of most concern, the synthetic organics; (4) control rigorously the quality of NOAA measurements of marine environmental quality; and (5) assess estuarine-related issues in the cleanup of hazardous waste dump sites near coastal waters.

For example, NOAA is developing a series of data atlases and data bases of important characteristics of major regions of the EEZ. The atlas for the Gulf of Mexico region will be completed this fiscal year, and the Arctic Alaska atlas in fiscal year 1986. A National Estuarine Inventory, encompassing physical, hydrologic, and land use data for 130 estuaries also will be completed this fiscal year. A National Pollutant Discharge Inventory for the East Coast is completed, and the West Coast inventory is scheduled for 1986. Implementation of the program is through a combination of in-house activities of NOAA scientists and analysts and contracts and grants to the private sector, universities, and other research institutions.

In 1984, NOAA began a National Status and Trends project to measure the ambient concentration of toxic elements and organic compounds in bivalves, bottom fish and sediments at 150 locations around the coast. A report will be completed by early fiscal year 1986 on the results of analysis of the collected benthic surveillance data.

NOAA also has statutory responsibility under the National Ocean Pollution Planning Act [NOPPA] to coordinate Federal marine pollution research, development, and monitoring programs, and to disseminate the information and results from these programs. The National Marine Pollution Program Office [NMPPO] prepares a five-year National Plan on a triennial basis, which describes the status of Federal efforts and identifies priority research and monitoring needs. The next National Plan will be completed and submitted to Congress in September 1985. We also are developing detailed action plans addressing ocean disposal of radioactive wastes, ocean dumping of industrial and municipal wastes, and the long-term chronic effects of offshore oil and gas development. NOAA supports the reauthorization of NOPPA for two years, with funding at $3.567 million for fiscal year 1986, and such sums as necessary for fiscal year 1987.

OCEAN RESEARCH

NOAA conducts programs of fundamental research, technology development and service improvement to further our understanding and prediction of the marine environment.

Observational and theoretical research is being conducted to improve our understanding of the relationship between ocean dynamics and large-scale air-sea interactions, especially as they contribute to global heat transport and climate variability. NOAA carries out this research through the international Tropical Ocean Global Atmosphere [TOGA] program and the Sub-Tropical Atlantic Climate Studies [STACS] program.

Our current TOGA activities include a long-term monitoring and data management effort, and a program of research grants to exploit the information collected and develop models. A real-time component of TOGA has been organized to provide diagnostic evaluations of the life-cycle of EL Nino-Southern Oscillation [ENSO] events through a series of augmented field activities. This effort will continue in fiscal year 1986.

Investigations of the ocean's role in climate variability for periods of time greater than a decade is being conducted through efforts like the Sub-Tropical Atlantic Climate Studies [STACS]. Techniques are being developed under this program to monitor the processes by which the North Atlantic Ocean transports excess solar heat poleward from equatorial regions.

Research also is conducted to improve understanding and the capability to predict phenomena important to marine warning and forecasting. Topics of study include coastal currents, and hazards such as winds, waves, storm surges and seiches, sea and lake ice, and tsunamis. Research stresses development of improved prediction models and observational techniques, especially remote sensing.

One of our objectives is to develop techniques to forecast sea ice conditions five to six days in advance for aiding fisheries and navigation in ice-covered regions. Plans are to extend this research into the Chukchi Sea.

With regard to marine resource related research, NOAA scientists have participated in multi-institutional research to carry out field studies of hydrothermal processes on the mid-Atlantic Ridge and other seafloor spreading centers. In fiscal year 1986, NOAA also plans to initiate Fisheries-Oceanography Coordinated Investigations [FOCI] program to improve our ability to understand and predict the effects of environmental variability on fishery resources. Information from FOCI should lead to more efficient management of major commercial fisheries. Initial attention will be on Alaska Walleye pollock, which consistently ranks first or second in the world's fish catch by volume.

SEA GRANT

The National Sea Grant College Program was established in 1966 with a goal of encouraging universities, industry and local governments to solve regional marine resource problems and to develop opportunities for marine resource utilitization.

We believe that the original intent of the legislation has been met. The program has completed its goal and 20 instsitutions have established strong marine science and education programs. The Sea Grant Program, however, has been a funding source for primarily locally and regionally oriented projects. This research should be fully supported by non-Federal funding.

NOAA FLEET

The ships of the NOAA fleet provide our seagoing capability to acquire data and information in support of our programs and those of other organizations. They are deployed from Arctic waters off Alaska to the tropical waters of the Equatorial Pacific and the Caribbean.

The objective in managing and operating this fleet is to increase the efficient use of the individual ships, and we are accomplishing this goal by modernizing and improving shipboard instrumentation aboard them, and by extending their usage to programs of national priority.

This year Shipboard Environmental Data Acquisition Systems [SEAS] and expendable bathythermographic [XBT] systems are being installed on all NOAA ships. These systems will permit the acquisition and transmission of meteorological and oceanographic data via satellite more rapidly and accurately than is now possible. The wide deployment of our ships will result in invaluable data, particularly in areas not routinely transited by other ships.

Major improvements in our shipboard mapping and charting systems also are planned. During fiscal year 1986 and 1987, acquisition of two multi-beam bathymetric survey systems is proposed. They will significantly improve our ability to map the EEZ. The Shipboard Data System III [SDS III], under development to replace the present hydrographic survey system, will undergo tests and evaluation in fiscal year 1986. This new system is expected to make drastic reductions in the time and labor required to process survey data.

Aside from equipment modernization, the use of our ships recently has been evaluated. After the completion of the Delaware Bay survey this year there is no further need for circulation surveys of estuaries as done by the *Ferrel.* Most of our hydrographic survey requirements for the east coast can be accomplished by field parties or contract surveys, thus need for survey ships is greatly reduced. As a result, we propose to lay-up the *Ferrel, Whiting,* and *McArthur,* thus saving over $4 million. Reimbursable agreements can be developed if other Federal agencies require the ships as was done with the Navy's use of the *Mt. Mitchell.*

NOAA already is increasing its cooperative projects with other agencies on priority national programs. The NOAA bathymetric mapping of the EEZ is part of a joint project with the U.S. Geological Survey. The NOAA-managed Alaskan OCS Environmental Assessment Program [OCSEAP] for the Minerals Management Service annually requires NOAA ships to support scientific projects. Hydrographic surveys are being conducted with the Defense Mapping Agency as part of the President's Caribbean Basin Initiative. In addition, piggyback and shared projects are being sought from academic institutions as well as Federal and state agencies.

NOAA is not seeking to relace the ships of its fleet, but rather through a program of modernizing shipboard equipment we are making them more effective platforms to serve projects important to the Nation.

AIRCRAFT SERVICES

NOAA operates a fleet of 12 aircraft located throughout the United States and also reimburses the Department of Defense for aerial weather reconnaissance of hurricanes and weather storms.

The NOAA aircraft are deployed in support of photogrammetric operations, gamma snow surveys, aeronautical chart reviews, the Outer Continental Shelf Environmental Shelf Assessment Program, and atomspheric and oceanographic reconnaissance operations and research. In fiscal year 1986, an estimated 3,700 flight hours are to be flown in support of these activities.

Mr. Chairman, this concludes my statement. I will answer any questions you, or the other members of the committee may have.

[The following information was subsequently received for the record:]

QUESTION OF SENATOR STEVENS AND THE ANSWERS

Question. You state in your statement that you believe states "are ready to assume funding" of their coastal zone management programs. Please provide the Committee with the analysis that leads you to that conclusion.

Answer. Since providing the initial § 305 seed money to all 35 coastal states in 1974, over $187 million has been provided by the Federal government to state programs under the CZMA. The proposal to turn responsibility for states funding their CZM programs is not new, albeit the states are now more able to assume funding than when President Carter proposed a phaseout of the program in 1980.

The Bureau of Economic Affairs of the Department of Commerce estimates that, in 1984, state and local governments held a combined revenue surplus of $52 billion. A recent study by the Treasury Department predicted that should current spending and tax policies continue, by 1989 state and local governments could achieve a combined surplus of $86.5 billion. Estimates on the Federal deficit are not as heartening.

The role of the Federal government in the Coastal Zone Management program is to protect the national interest in the zone, and to encourage states to manage, develop, and protect the resources in their coastal zone. The Federal government has paid a substantial amount to coastal states to organize and implement their CZM programs. Today, the states are financially better situated to assume the costs of their CZM programs, if it is, indeed, a priority for them.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. The National Academy of Sciences, in its 1980 report on the "Need for a Multipurpose Cadastre", found "there is a critical need for a better land information system in the United States . . . for resource management and environmental planning." What is NOAA's Office of Charting and Geodetic Services doing, under existing statutory authority, to enhance efficiency and coordination in the development of a land information system in the Federal Government and for State and local government and the private sector?

Answer. In response to the National Academy of Sciences' recommendation described in the reports "Need for a Multipurpose Cadastre," 1980, and "Procedures and Standards for a Multipurpose Cadastre" NOAA conducted a thorough evaluation of its potential roles and responsibilities in this area. Based on that evaluation, a proposed role and program were prepared and approved by the Administrator. The Office of Charting and Geodetic Services has done the following: (1) developed and conducted a multipurpose cadastre training program for its key staff; (2) provided technical assistance to 15 state and local governments; 3) distributed its geodetic survey data and standards; (4) made presentations on this topic at several professional meetings; and (5) begun negotiations for pilot projects with local governments for the use of geodetic control in a multipurpose cadastre.

As the chair of the Federal Geodetic Control Committee [FGCC], NOAA has focused the attention of that body on the multipurpose cadastre and its responsibility for coordinating Federal activities in their endeavor. As a result of meetings with other Federal mapping and surveying committee chairpersons, agreement has been reached recognizing FGCC as the overall Federal coordinating body for the multipurpose cadastre.

Question. During a NOAA Appropriation hearing, Mr. Calio indicated that after the rescission proposal expired, processing of State CZM grants would begin immediately. What is the current status?

Answer. On April 26, 1985, the Office of Ocean and Coastal Resource Management, NOAA, issued a memorandum to State CZM Program Managers, informing them of the allocations of FY85 funds under Sections 306 and 306A of the CZMA, and requested submission of outstanding grant applications. A copy of this memorandum is attached.

Question. In 1983, the Inspector General of the Department of Commerce produced a report on the administration of the Coastal Zone Management Program. The report made several recommendations for changes in the implementation of the CZMP. What progress has been made with respect to the suggestions presented in the report?

Answer. A. The OCRM reviews of state programs need to include more systematic evaluations of management decisions and accomplishments at both the local and state level to access the effectiveness of program results—

greater contact with user groups—individuals affected by a program such as Associated Building Contractors, Chambers of Commerce, local elected officials, and environmental groups;

permit file review with field verification in every state;

detailing only the significant achievements in findings document;

specific/ongoing state assignments to evaluation analysts for long term monitoring purposes; and

increased public notice through NOAA Public Affairs announcements.

B. The OCRM needs to encourage states to improve their Coastal Zone Programs:

encourage improvements through addition of new or expanded coastal projects such as increased access and improve local government resource management;

306(i) report has been completed in draft and is being circulated for comment;

306A—a number of states intend to use these funds for program improvements;

cost effectiveness a continuing issue in all evaluations;

improved monitoring by program and evaluation staffs.

C. Periodic evaluations of state programs should be based more on need:

scheduled on an as needed basis—not more than once a year but at least once every two years (required by regulations). In fiscal year 1984, 19 evaluations were made; and in fiscal year 1985, 16 evaluations are scheduled, including 7 repeats;

issue specific evaluations are now being conducted;

15-day turn-around on preliminary recommendations;

evaluations analysts are evaluated on meeting scheduled report deadlines.

Senator STEVENS. Our next witness is Mr. Richard Delaney, chairman of the Coastal States Organization and assistant secretary for Environmental Affairs of the Commonwealth of Massachusetts.

Good morning, Mr. Delaney. Would you state for the record who is accompanying you.

STATEMENT OF RICHARD F. DELANEY, CHAIRMAN, COASTAL STATES ORGANIZATION, AND ASSISTANT SECRETARY FOR ENVIRONMENTAL AFFAIRS, COMMONWEALTH OF MASSACHUSETTS, ACCOMPANIED BY GARY MAGNUSON, DIRECTOR, WASHINGTON OFFICE

Mr. DELANEY. Mr. Chairman, with your permission, I have Gary Magnuson, who is the director of the Washington office of the Coastal States Organization accompanying me this morning.

Senator STEVENS. Thank you very much.

Mr. DELANEY. Mr. Chairman, thank you for the opportunity to testify this morning on behalf of S. 959. I am Richard Delaney. I am the assistant secretary of Environmental Affairs for the Commonwealth of Massachusetts and currently serving as the chairman of the Coastal States Organization.

That organization is composed of Governors' delegates from 35 coastal States and territories. I am here to express on its behalf our enthusiastic support for S. 959. My thanks go to you and to Senator Gorton for cosponsoring that bill. Thank you.

We have submitted written testimony. I would like, at this point, to add, if I may, for the record, a number of other organizations that have requested that we mention their support here this morning for the record. Letters of support have been submitted for the record for the reauthorization of this bill by the National Governors Association, the National Association of Counties, the American Planning Association, and the Great Lakes Commission.

Resolutions of support have been adopted by the following groups: the Council of State Governments, the Interior OCS Advisory Committee, the New England Governors Conference, the International Association of Fish and Wildlife Agencies, and the Pacific Basin Development Council.

I would like to take my brief few minutes this morning, Mr. Chairman, to highlight the important points of our testimony. The most important message which I can bring to you on behalf of the Coastal States is that we feel 1985 is a critical year for coastal management because it is time to renew the partnership between the Federal Government and the Coastal States as trustees of America's coastline. That partnership was initially founded, as you know, in 1972, by the Coastal Zone Management Act, with a very unique voluntary and cooperative Federal, State, and local frame work. We feel that S. 959 is an excellent basis and foundation for renewing that partnership. This is the critical year to do that.

Since 1972, there has been significant progress made in managing the dynamics of our more than 95,000 miles of U.S. coastline. That progress has been made in balancing both the need to preserve the critical, fragile, natural resources with the need to develop appropriately the economic resources of the coastline.

We have submitted for the record—and I hope the members of the committee have received it—a report, which the Coastal States Organization just completed last month. I think it is a good illustration of that progress in many of the areas. Some of the areas that this report covers and areas that the coastal programs have focused on include the redevelopment of urban harbor waterfronts.

The report highlights the planning efforts, that we have made in reducing both the environmental and economic risks of development in hazard prone areas, such as barrier beaches.

It highlights the significant progress made in opening America's coastline for access to the public, both visually and physically, so that recreational opportunities can be fully appreciated.

The document illustrates efforts to preserve fragile natural resources, such as salt marshes and estuaries around the U.S. coastline.

Other topics that are covered include advances in facilitating the siting of energy facilities, expediting the permitting process, and our overall efforts for coordinating the numerous layers of agencies and governments that are involved in making the very complex and critical decisions along the coastline.

However, we should not rest at this point.

My other message to the committee this morning is that the demographic projections that were made back in 1972 about the population movements to the coastline are becoming true. In fact, they are becoming true at a quicker rate than perhaps was projected back then.

We now see the population moving to the coastline at a rate that will have 80 percent of all Americans living either in a coastal town or city or at least within a 50 mile radius of one of our coastlines.

With that comes unprecedented pressures and demands on those resources. To cite a couple of examples that are detailed to a greater extent in the report, the State of Florida is being settled in record numbers; 3,000 to 4,000 people a week are moving into that State.

South Carolina's permitting applications and certifications for development have increased by 300 percent over the last 4 years. Neighboring North Carolina has experienced a 400-percent increase.

Eighty percent of California's population already lives within an hour's drive of the coast. On a hot summer's day, one-half million people are attempting to go and use the beach facilities along the coast of California.

As you know, I am sure, 90 percent of the Alaskan population lives in the immediate coastline area.

Areas where tourism is accelerating rapidly in the Northern Mariana Islands, Guam, and the Virgin Islands are generating an expansion of coastal development, including condominiums, hotels, marinas, which require new infrastructure and comprehensive planning.

My point, Mr. Chairman, is that the need clearly continues to be there.

We support S. 959 because we feel that is the first step in renewing this partnership. I would just go quickly to our recommendations, our specific recommendations, as outlined in our testimony.

We believe that the multiyear reauthorization in the bill is good, and we support the 5-year timeframe.

We believe strongly that the continuation of an adequate level of funding under sections 306, 306(a), and 309 is necessary to maintain the National Coastal Program, and we support the levels which essentially are a freeze of the existing levels in the bill as it is written now. I would like to note, however, that with the increased pressures that I just mentioned, it is important to have an escalating factor in there, as you have, for the 4.5 percent. That still will leave a shortfall that the States will have to pick up in terms of their own contributions to coastal management.

At this point, the States are doing that. It is a natural evolution and spinoff of the coastal zone management concept.

There are two other points that I will mention. They are expanded in our testimony.

One suggestion the committee might want to entertain is to look at section 308(c)(2), under which is authorized grants to States to assist them in meeting their responsibilities under the Outer Continental Shelf Lands Act. Most of the attention there has been focused on oil and gas operations. We see, in the future, other activities going on in the oceans, including seabed mining, the potential for offshore incineration of hazardous waste, increased opportunities for ocean dumping. We feel that if you just broaden the scope of that section, it would be the appropriate kind of assistance from the Federal Government to the States to help manage those new activities in an expeditious way.

We also would suggest that the committee consider emphasizing the estuarine research and reserve research system. This was discussed in H.R. 2121. The estuaries around the country are clearly one of the most critical resources and are the focal point of much of the development that is going on. That kind of emphasis would be appropriate.

In closing, the Coastal States Organization certainly appreciates your support of this bill. I would like to note that Congress last reauthorized the Coastal Zone Management Act in 1980, which was proclaimed the "Year of the Coast." In keeping with the spirit of 1985, which has been presidentially proclaimed as the "Year of the Ocean," we would ask the Congress once again to reaffirm the Nation's commitment to insure the wise management of its coastal and ocean resources.

Thank you very much, Mr. Chairman.

Senator STEVENS. Senator Gorton, do you have any questions?

Senator GORTON. No, thank you.

Senator STEVENS. Senator Kasten, do you have a statement or any questions?

Senator KASTEN. Mr. Chairman, I do not have a statement or questions at this time. I see that we are about to have a vote.

Senator STEVENS. Yes, we have a vote on now.

Senator KASTEN. Thank you, Mr. Chairman.

Senator Stevens. Mr. Delaney, you talk about a partnership, and yet it is an 80-20 partnership now. Has there been any discussion in your organization about some sort of transition so that the States would, in fact, make this a full-blown partnership?

Why should the Federal Government pay more than 50 percent of the costs of improving the management of programs off each State?

Mr. DELANEY. Mr. Chairman, I think the correct way to view the total costs of managing our coastline is to put aside the 80-20 percentage ratio for a minute and understand that the States contribute significantly more to the overall management than appears in that 20-percent match.

Senator STEVENS. Well, I would have hoped that you would have said that the responsibility of each State is not the same. Mine, for instance, has half the coastline of the United States. Rhode Island has the smallest portion of the coastline for a coastal State. But they are each contributing a substantial portion at the present time. I do not think the burden is equal; that is one answer.

Why can't some States support more? I very frankly think my State ought to support this program a little bit more.

Mr. DELANEY. Well, I agree and I hope they all move in that direction. The point I was trying to make was that some States, in fact, do contribute significantly more than 20 percent now to the overall management of their coastlines. In fact, the cost of managing comprehensively each State's coastline is significantly more than the total Federal grant, even including that 20 percent State match.

Senator STEVENS. We would like to see something on that. That is the question that gets asked us, why don't States do more.

Maybe you could help us by documenting the record a little bit more with some of that information.

Mr. DELANEY. I would be glad to.

Senator STEVENS. We have a vote on and will all have to leave. But I want to finish up with you so that when we come back we can begin with the next witness.

NOAA released its draft Federal Consistency Study and it indicates that some of the consistency provisions already in place have resulted in delays and problems for Federal permit and license applicants.

Are you familiar with that study?

Mr. DELANEY. We have just received a draft copy, very recently, sir. Yes.

Senator STEVENS. We would be interested to have your comments, if you would submit them to us as soon as you can, on the problems that NOAA has delineated, and what plans CSO might have to try to offset some of those problems that are developing.

I appreciate your testimony and I do have to go to vote.

When I return, we will continue with Ms. Fahrer.

Mr. DELANEY. Thank you.

I would be glad to submit both of those for the record for you.

Senator **Stevens**. Thank you.
[The statement follows:]

Statement of Richard F. Delaney, Chairman, Coastal States Organization

Mr. Chairman and members of the committee, I am Richard F. Delaney, Chairman of the Coastal States Organization [CSO] and Assistant Secretary for Environmental Affairs for the Commonwealth of Massachusetts. I am pleased to appear before you today on behalf of the CSO, an association representing the governors of 35 coastal states, commonwealths, and territories of the U.S., to testify in support of S. 959, legislation to reauthorize the Coastal Zone Management Act [CZMA].

Reauthorization of this landmark national coastal law and continued federal involvement with program oversight and funding are crucial to the states' long-term ability to manage individual coastal programs that also meet important national policy objectives.

The resurgence of economic and environmental vitality in our nation's coastal areas since passage of the CZMA 13 years ago is no coincidence. Our Organization has released a report which documents the states' extraordinary success over the last decade in applying federal coastal zone management funds to economic development projects, in managing the nation's coastal resources and in streamlining governmental decisionmaking. That report—"America's Coast: Progress and Promise"—is a treatment to the effectiveness of the CZMA. Copies of this report will be made available to Members of the Committee.

While substantial progress has been made since 1972 toward a more balanced use of land and water resources in the nation's coastal zone, much work remains to be done. A recent CSO survey of all member states indicates that the demands placed on finite U.S. coastal resources have and will continue to rise steadily. Current projections place more than 80 percent of our nation's population within 50 miles of a U.S. shoreline by the year 2000. This kind of population expansion will result in even greater demands for housing, marinas, public access, harbor and port expansion, and energy facility sitting.

Should the Act fail to be reauthorized or federal grants significantly reduced, many state coastal programs would be forced to curtail management activities that have clearly been demonstrated to be in the national interest.

States cannot, and should not, be left to fend for themselves. The federal government, having established an intergovernmental framework through which our coastal zone is currently managed, would cause irreparable economic and environmental harm if it abandons states at this crucial juncture.

THE NATIONAL INTEREST AND THE FEDERAL/STATE PARTNERSHIP

In passing the CZMA in 1972, Congress recognized an urgent need for federal-state cooperation in efforts to minimize increasing development pressures on the nation's coasts; to protect fragile bays, beaches and wetlands; to encourage development of underutilized urban ports; and to develop sound and balanced management plans for 95,000 miles of U.S. coastline.

Members of this Committee may recall that the Act was approved only after long and careful debate and the decision was based upon the findings and recommendations of the renowned Stratton Commission. At the time, the CZMA was also being considered in conjunction with even more comprehensive land-use legislation which would have established planning for inland as well as coastal areas. The overwhelming vote in favor of the final CZMA bill—376 to 6 in the House and 68 to 0 in the Senate—signaled a strong congressional mandate for national coastal zone management.

Congress established through the CZMA a unique, voluntary and cooperative federal-state-local framework for balancing national needs for economic growth with resource protection and simplified multijurisdictional decisionmaking. The CZMA provided states with two incentives to encourage their participation in the national program—(1) the availability of federal funds and technical assistance for the development and implementation of federally approved state programs, and (2) federal consistency authority, which requires the federal government to carry out its activities in a manner consistent with the states' approved coastal management programs. Both of these incentives are vital components of a viable and dynamic national coastal management program which has proven to be highly successful in accomplishing the CZMA's objectives.

The Act clearly states that it is in the national interest to help states preserve, protect, develop and, where possible, restore or enhance our nation's coastal resources, giving full consideration to ecological, cultural, historic and aesthetic values as well as to needs for economic development. In 1980, Congress reaffirmed the federal commitment by unanimous consent. The 1980 Amendments specified eight national policy objectives, tied state grants to the achievement of these objectives, and strengthened the Section 312 state program evaluation process. As in 1972, Congress authorized multi-year level funding for coastal management grants to states to ensure the continued development of the national program.

STATE ACHIEVEMENTS

The benefits of the national coastal management program have extended far beyond those which Congress first envisioned over a decade ago. At the time the CZMA was enacted, only a few states—including Delaware, Rhode Island, Oregon, Washington and California—had the statutory authority to respond to the tremendous growth and development pressures being placed on their coastal regions. Since the CZMA's passage, all 35 eligible coastal states, commonwealths and territories have participated in the national coastal management program. Of these, 28 have now developed and are implementing federally approved management plans. One other coastal state, Virginia, is expected to have its plan approved later this year. Those coastal states currently without programs, such as Ohio, Georgia and Texas, are now considering re-entry.

Those states with coastal programs have made substantial progress in achieving the national policy objectives of the CZMA as partners with the federal government. New state laws and strengthened regulations have led to comprehensive protection of wetlands, estuaries, barrier islands, bays, coastal ponds, coral reefs, fisheries, and waterfowl. Many states, including North Carolina, New Jersey, Maryland, Florida, New York and South Carolina, have worked closely with local governments to develop extensive storm hazard mitigation plans and coastal erosion regulations to protect lives and property from hurricanes, floods, landslides, erosion and land subsidence. These efforts have been particularly important in areas where natural protective features such as barrier islands and wetlands have been destroyed or improperly developed.

With the use of CZMA funds states have successfully located major facilities and planned coastal-dependent development in harbors and ports to improve U.S. commerce, facilitate energy exploration and development, enhance fishery production, and support the nation's defense systems. The CZMA has enabled states to identify suitable sites for the construction of facilities needed to meet these national objectives and to mitigate potential coastal impacts from their operation, and has provided states with the necessary mechanisms for insuring their orderly development and maintenance. CZMA funds have also helped states manage the disposal of dredged materials more effectively and implement a number of other harbor management and improvement projects.

Newly revitalized and redeveloped urban waterfronts are the product of joint federal, state and local CZM initiatives. Our report illustrates the extent to which CZM funds serve as a catalyst in encouraging millions of dollars in private investment for projects such as port and harbor renewal in cities from coast to coast. One objective of this revitalization is compatible multi-use of waterfront areas, a combination of commercial and recreational activities that stimulate the economy and provide a more livable environment. Renovated piers, new fishing and shipping facilities, marinas, parks and interpretive trails are being constructed along what had once been deteriorated and underutilized waterfronts.

Public access to the nation's shorelines has improved significantly in many states. State coastal programs have been instrumental in striking a balance between the rights of property owners and the public and in resolving many access-related conflicts. CZMA funds have also enabled states to plan and identify suitable locations for the construction of public accessways, waterfront parks, bike paths, and public roads. Many coastal states now require improved access to beaches and shoreline facilities as a precondition for development permits. States are also distributing hundreds of access guides and maps each year to provide the public with detailed information on access sites, recreational facilities, and coastal ecology.

Many permitting procedures have been streamlined to expedite the governmental decisionmaking process for the regulation of federal, state, local and private development activities in the coastal zone. This has been accomplished in a variety of ways—by establishing joint permit processing with the Corps of Engineers, setting project priorities, combining permit monitoring systems with computerized data bases, consolidating separate regulatory programs, and creating interagency steering committees.

All coastal states encourage active public participation in their programs to improve intergovernmental coordination and involve communities in coastal decisionmaking. These efforts have been particularly effective in local and special area management planning.

STRESSES ON THE COAST: THE NEED TO CONTINUE COASTAL MANAGEMENT

Despite the states' impressive record of success and their ability to meet each of the national objectives specified in the CZMA, we cannot lose sight of the fact that growth will continue along our coasts, bringing with it new and increasing demands upon our coastal resources and economies.

The CSO recently completed a survey of those states and territories participating in the national coastal zone management program, the results of which are being submitted as separate attachments to this statement. This survey has brought to light some rather alarming trends. For example, population in Maryland's Chesapeake Bay region grew by 50 percent over a 30-year period, between 1950 and 1980. In South Carolina, the number of applications for coastal development permits and certifications issued by the state increased by 300 percent over the last 4 years, while neighboring North Carolina has seen a 400 percent rise in permitting activities. Delaware has experienced a steady increase in second home, marina and resort develpment, particularly along with bayshores. In Wisconsin, recreational fishing with its associated marina development has become a multi-billion dollar industry. California is expecting $6-10 billion in construction of offshore and onshore oil and gas facilities within the next decade. Alaska, with 90 percent of its population living in the coastal zone, is also expecting a large increase in OCS exploration and development activities.

Other challenges facing coastal states and territories include: loss of wetlands, contamination of aquifiers and salt water intrusion, demand for private marina and docking facilities, beach erosion, hurricane hazard mitigation, the proliferation of condominiums and hotels in previously remote coastal areas, seasonal population growth in coastal resorts, water quality deterioration, conflicts between water-dependent and non-water dependent uses, houseboats, public access, energy facility development, preservation of open space, facilities for commercial and recreational fisheries, aquaculture, harbor development projects and potential impacts from offshore mineral mining, ocean incineration operations and dredged material and hazardous waste disposal siting.

The need for continued coastal management has never been greater. We are entering a crucial period where activities in the nation's coastal regions are intensifying, requiring skillful management from all sectors, public and private. The framework and mechanisms to address these problems exist now through the CZMA.

THE NEED FOR FEDERAL FUNDING

Over the past decade, Congress has appropriated approximately $187 million for the development and implementation of 28 state programs, an investment which has been crucial to the success of the national coastal management program, as proven by the states' accomplishments. Federal dollars have also contributed significantly toward economic expansion in the coastal zone, generating millions in private capital for coastal development and resource protection projects. Clearly, the federal contribution has been a vital component of this program.

If federal funding were to be substantially reduced or eliminated, the business of national coastal zone manangement would be severely affected. Federal constraints imposed on CZMA funding levels over the last four years have already forced states to redirect available grant monies toward the survival and maintenance of core coastal program functions. Furthermore, many state are already contributing for more than their 20 percent share in order to meet the national objectives and to keep their programs going.

Despite their willingness, most coastal states are financially unable to assume full responsibility for managing the nation's ocean and coastal resources. CSO's recent survey of member states and territories on the potential impacts of federal budget cuts revealed that all the federally approved coastal programs in the state and territories would suffer. Most states would have to significantly reduce their coastal program staff. This is in addition to an average layoff rate of approximately 25 percent over the past several years.

There would be an overall curtailment of planning and regulatory activities due to loss of staff to perform them. Coastal development permit processing and federal consistency determination reviews would be subject to lengthly delays and/or a lower rate of approval due to lack of time and resources to negotiate or mitigate. As a result, litigation would be more likely to occur. Permit monitoring and enforcement would also be cut back. Many states would be forced to eliminate special management planning efforts, such as shore protection, urban waterfront development, dredged material disposal siting and mitigation, water quality improvements, public access improvements, and shellfish management. Public participation programs would have to be reduced in scope or eliminated altogether. In many states, local governments are the recipients of a significant portion of the federal grant money for coastal planning and regulatory activities to address resource and land use conflicts on the local level. If federal funds are significantly reduced, states would no longer be able to share their grant money with the local governments. Without this funding source, local coastal planning efforts, which are intended in time to be the focal point for implementation of state program initiatives, would be severely disrupted. Since coastal programs in the territories are funded almost entirely by the federal government, a reduction or elimination of federal grants would have an even more serious impact; without federal funding, coastal zone management would effectively come to a standstill, just as the island tourist industry and its related coastal development is rapidly expanding.

In its budget analysis, the Administration has attemptd to portray federal funding for state coastal management as "seed" money that is no longer needed or appropriate. It contends that the federal-state coastal management partnership embodied in law has been successful and is now complete, that the coastal management mechanisms are fully and equally implemented by a vast majority of coastal states and that federal funding can be withdrawn without undue harm to the alliance. We strongly disagree and take issue with these views.

It is our understanding that only in the Senate Appropriations Committee report accompanying the FY81 Supplemental Appropriations bill, which was also sustained in conference, has there been any legislative history that remotely backs the Administration's claim. The report decribes the recommendation of the Committee to transfer $33 million proposed for rescission in 1981 from the Coastal Energy Impact Fund to "CZM to provide continued support grants to States under the CZMA for the phase-down of the program." However, the report also states the Committee's concern "that the abrupt termination of CZM funding in 1982 as proposed by the President could lead to discontinuance of up to 20 of 25 State programs approved by the Secretary to date."

Coastal states understand and can readily appreciate both the President's and the Congress' desire to restrain federal spending. Figures released recently by the National Governors' Association and the National Association of State Budget Officers indicate that several coastal states which are eligible for CZMA grants may have a budget surplus by the end of fiscal year 1985. What these estimates don't reveal, however, is that this surplus amounts to only 3.14 percent of the coastal states' total 1985 general revenues and represents a reduction from the average coastal state balance surplus of 4.65 percent in fiscal year 1984. Nor does this figure reflect the fierce competition that has developed within the states because of substantial federal budget cuts for whatever state funds are available to help finance programs such as coastal management. With this in mind, the CSO has limited its FY86 request for federal CZMA grants to what amounts to a barebones funding level. Member states of the CSO realize that in supporting a "freeze" of federal CZMA funding for fiscal year 1986, as proposed in S. 959, coastal states will absorb the full cost of emerging federal ocean activities proposed for 1986. Such activities, which will undoubtedly have consequences for coastal states, include: the implementation of the Department of Interior's new 5-year OCS oil and gas leasing plan, the Environmental Protection Agency's offshore incineration and ocean dumping programs, and federal studies to explore and develop the U.S. Exclusive Economic Zone.

Coastal states are willing to accept their legitimate role as stewards of this nation's ocean and coastal resources and to form a strong, viable partnership with the federal government in cooperatively managing the country's coastline. The CSO believes, however, that it is the federal government's responsibility to keep its compact with the states intact, just as Congress intended, and to continue to provide fiancial and oversight assistance.

CZMA REAUTHORIZATION LEGISLATION—RECOMMENDATIONS

The CSO offers the following recommendations with respect to the CZMA reauthorization bill now pending before the Committee:

The CSO supports a strong multi-year reauthorization of the CZMA as embodied in S. 959. The federal government should reaffirm its commitment to the states and its citizens that the working governmental partnership under the CZMA will continue over the long term to effectively manage and plan for the nation's coastal resources.

The CSO believes strongly that the continuation of an adequate level of CZM funding under Sections 306, 306A and 309 is necessary to maintain the national coastal program. Thus, the CSO supports the proposed increases in funding for those sections under S. 959 as a fiscally responsible means to respond to the rising cost of coastal management.

The CSO also recommends that Section 308(c)(2), which authorizes grants to assist states in meeting their responsibilities under the Outer Continental Shelf Lands Act [OCSLA], be amended to reflect future federal activities planned for the recently proclaimed U.S. Exclusive Economic Zone [EEZ]. The section 308(c)(2) OCS participation grants, while certainly appropriate in assisting states in addressing the various coastal impacts associated with federal OCS activities, does not address the potential effects of federal activities occurring in the EEZ and seaward of the Continental Shelf may have on coastal states. The EEZ, which was proclaimed by President Reagan three years after the last CZMA reauthorization in 1980, practically doubles U.S. jurisdiction and will be the site of many future federal activities: deep water oil and gas exploration and development, offshore incineration of hazardous wastes, ocean dumping, and deep seabed mining. Such activities which in some cases will begin later this year, undoubtedly have consequences for coastal states. Therefore, as an extension of the original intent of Section 308(c)(2), the CSO recommends that the Secretary of Commerce be authorized to make grants to eligible states which the Secretary finds are likely to be affected by federal activities occurring in the EEZ, including the OCS, and that such grants assistance shall be used by eligible states to carry out their responsibilities under the Outer Continental Shelf Lands Act, the National Environmental Policy Act, the Clean Water Act, and any other statute applicable to federal EEZ activities.

The CSO supports the amendment to Section 315 as reported in the House Bill (H.R. 2121), which would establish a National Estuarine Reserve Research System. We believe that the present estuarine sanctuary program is in need of improvement, particularly in the areas of designation procedures, the promotion, coordination and guidance of research and evaluation of system performance. We agree with the language in this section of H.R. 2121, and recommend its inclusion in S. 959.

CONCLUSION

The CZMA is the only comprehensive tool which allows federal, state and local governments to cooperatively manage the beaches, bays, wetlands, ports and harbors, estuaries, islands and fisheries of our nation's coastal areas. Its flexible management authority has given coastal states a workable intergovernmental framework with which to address individual state problems and issues in a unified national context. The states have been working diligently to achieve the management goals and national objectives which they hold in common with the federal government. As our coasts face an increasingly complex and challenging future, the Administration must renew its compact with the states by adequately funding this invaluable program.

Congress last reauthorized the CZMA in 1980, during the Year of the Coast. In keeping with the spirit of 1985—the presidentially-proclaimed Year of the Ocean—we ask that Congress once again reaffirm the nation's commitment to ensuring the wise management of its coastal and ocean resources.

[The following information was subsequently received for the record:]

Coastal States Organization,
Washington, DC, May 16, 1985.

Hon. **Ted Stevens,**
National Ocean Policy Study, Hart Senate Office Building, Washington, DC.

Dear Senator Stevens: I have been asked by Coastal States Organization [CSO] Chairman Richard Delaney to respond to your questions raised during the Senate Commerce, Science, and Transportation Committee's May 1 hearing on legislation to reauthorize the Coastal Zone Management Act [CZMA].

In response to your question regarding how many states are already covering more than 20 percent of their total program costs and to what extent, I can only submit for the hearing record at this time information provided by the states to a recent request by the NOAA Office of Ocean and Coastal Resource Management [OCRM]. Thirteen of the 15 states responding to the OCRM request indicated that they will cover more than 20 percent of their total coastal zone management program costs for fiscal year 1985. On an average, the 15 states provided 44.9 percent of the total CZM state program costs. Should the Committee require more complete information regarding all 23 federally-approved state coastal programs, the CSO would be willing to conduct a survey of those state programs.

In response to your question regarding the findings of the NOAA Draft Federal Consistency Study and what the CSO intends to do about problems for Federal permit and license applicants caused by the implementation of the CZMA consistency provisions, it should be noted that this study found that for fiscal year 1983, the percentage of non-concurrences by states for consistency determinations was quite low. Out of more than 750 direct Federal activities reviewed, including OCS lease sales, 4 percent resulted in non-concurrences; only 2 percent of the more than 5,000 Federal licenses and permits reviewed were turned down; and 3 percent of the 200 OCS plans and 1 percent of over 1200 Federal assistance activities reviewed were not agreed to. Furthermore, Secretarial mediation was requested six times, and in none of these instances did it result in the Federal activity being denied. The study also reported that in most cases the states responded to a consistency determination within the allotted time provided by law, and for those cases in which a state consistency review took longer than 60 days, the states or Federal agencies ultimately reached an agreement most of the time. Clearly then, the results of this study show that the problems alluded to in your question have been few, and that overall the consistency process is working well. This is the same conclusion reached by NOAA's former Administrator John Byrne when he testified before the Senate Commerce, Science, and Transportation Committee last year.

The consistency process has been effective in providing coordination and cooperation between Federal agencies, industry, and the states, as the title of CZMA section 307 implies. The process, however, has not been without controversy and disagreement. The CSO, which serves as a forum for review, debate, and assessment of ocean and coastal issues affecting the states, has on numerous occasions discussed the consistency process, including legislation, NOAA regulations, Secretarial appeals, and the *Interior* v. *California* litigation. The CSO strongly believes that the consistency process is an integral incentive for states to participate in the national coastal program and, therefore, is of significant importance to the Organization. The CSO stands ready to assist the committee during its deliberations on this important matter.

I trust that this information is helpful to you. Should you or your staff have additional questions, please let me know.

Sincerely,

R. GARY MAGNUSON,
Director.

[A brief recess.]

Senator STEVENS. Our next witness is Ms. Alison Fahrer, commissioner of Monroe County, FL.

Good morning, Commissioner.

Ms. FAHRER. Good morning, Mr. Chairman.

Senator STEVENS. Please proceed. We will place your full statement in the record, if you wish I know that you do have a summary.

STATEMENT OF ALISON FAHRER, CHAIRMAN, FLORIDA GOVERNOR'S COASTAL RESOURCES CITIZEN ADVISORY COMMITTEE, AND COUNTY COMMISSIONER, MONROE COUNTY, FL

Ms. FAHRER. Yes; I would like to read something a little different and in addition to what is in my full statement.

Senator STEVENS. We will print your full statement. Please proceed as you wish.

Ms. FAHRER. Thank you.

Mr. Chairman and members of the committee, my name is Alison Fahrer. I am chairman of the Florida Coastal Resources Citizen Advisory Committee and a commissioner from Monroe County, which is the Florida Keys.

Thank you for inviting me to appear before your committee.

The Florida Citizen Advisory Committee is remarkably diverse in its membership. It includes development interests, environmental leaders, local government officials, and State agency representatives.

Even more remarkable is the diligence and unanimity of our 21 member group. These busy people even take time to screen applications for coastal zone management grants, to insure the most valuable results for tax dollars spent.

Our committee urges the long-term reauthorization of the coastal zone management bill, which has been a valuable and successful partnership of Federal and State programs. The act has been an investment in future econonomy, especially relating to coastal hazards.

As a nation, we are becoming more aware of the costs and devastation brought by hurricanes and coastal storms. In this past year, a minor Thanksgiving weekend storm off Florida's east coast caused $8 million in assessed losses. Almost half were public losses in coastal roads, utilities, and recreational facilities.

Replacement of the beaches eroded away by the storm would add $150 to $200 million. The long-term loss to Florida's tourist economy is not yet determined.

Hurricane Alicia in Texas left behind 18 people killed and 3,000 injured, and damages in excess of $1 billion.

Without doubt, better management of high hazard coastal areas serves the national interest.

The Coastal Zone Management Act is essential if the coastal States are to continue their present high-level work on protection of natural resources and the prevention of improper development in coastal areas. Not only are the dollar losses tremendous in coastal areas, but high winds, storm surge, flooding, and erosion, destroy lives as well as coastal resources.

Florida, with two coastlines the length of the State, is doubly vulnerable to ocean storms, both in safety and economic terms. Our State's flat topography makes coastal areas especially susceptible to destruction by storm surge and high winds.

Further, as in other coastal States, Florida's population is concentrated along the coast. By the year 2000, we expect that 85 percent of new residents—about 12 million people—will settle in Florida's coastal areas. When development increases along our coastlines, our potential loss of life and property is enormous.

Since receiving Federal approval and funding in 1981, the Florida Coastal Management Program has targeted hazard management as an area of special focus.

We know that over 75 percent of the people living in Florida today have never experienced a hurricane and are unaware of the costly and devastating effects, and the National Hurricane Center statistics tell us that Florida is overdue for a major hurricane.

Federal coastal grant moneys are helping us address the continuum of hazard planning and management projects. We are preparing hazard evacuation plans, hazard shelter studies, hurricane loss analysis, and also hazard mitigation and postdisaster redevelopment policies to be followed after the next hurricane.

These studies are providing us with a clear picture of the public costs assessed to coastal storms—Federal, State, and local dollars which all taxpayers bear. We are able to show how Floridians can save billions of dollars in future public investment by regulating development in high hazard areas and by establishing sensible mitigation and postdisaster redevelopment policies.

A coastal funded regional hurricane loss study for the Tampa Bay region projected a structural loss from a worst case storm at over $9.6 billion. These potential costs raise chills that catch the serious attention of State and local governments, who will each have to pay 25 percent of all disaster relief funds to be eligible for Federal disaster relief.

Hurricane evacuation is a concern of nightmare proportions in coastal Florida, with accurate official evacuation warning no more than 12 hours before a hurricane landfall, and 30 hours needed to evacuate the Florida Keys, 21 hours to evacuate south Florida, 27 hours to evacuate southwest Florida, and 18 hours to evacuate the Tampa Bay area.

Coastal grants have helped local governments develop and adopt strong hurricane resistance building construction codes to protect life and property and prevent millions of dollars in storm damage when the hurricane hits their communities and total evacuation is impossible.

Coastal funds also support efforts to restrict inappropriate shoreline development and provide data based on studies of natural shoreline erosion and change.

Coastal legislation pending before the Florida Legislature restricts public expenditures for infrastructure to areas on undeveloped coastal barriers. This complements the National Coastal Resource Barriers Act.

This legislation would also require local governments to develop postdisaster redevelopment strategies.

The programs I have mentioned are all the result of the Federal Coastal Zone Management Act and the impetus it has given to State action. The cooperation of all coastal States in solving their coastal problems has been another invaluable result of the act.

We urge you to support the reauthorization of the Coastal Zone Management Act. Our partnership in providing solutions to coastal management problems must not be abandoned. Thank you.

Senator STEVENS. Thank you very much.

Tell us a little bit more about how Florida has implemented this hazards management concept. Do you earmark money in your county for hazards management?

Ms. FAHRER. We have not been the recipients of grants specifically in my county for this, but we have been obliged by our State legislature to provide for our people a hurricane evacuation plan. We are spending our own money doing these things. We are obliged to have a State acceptable plan for our county for construction, for evacuation, for the things that will take care of our people. But the research that is needed for us to know what to do is one of the things that is provided through the coastal grant moneys and through the State grants.

Senator STEVENS. I see.

I appreciate your statement. It is a very good one.

It sounds like Florida is spending a great deal more money than most other States in terms of coastal zone management. Are you spending more in Florida than the Federal Government already?

Ms. FAHRER. Yes, we are. I think that it was the leadership of the program that caused our State to do it. We know things now that we did not know before. Painful as it is, that means we have to address them.

Senator STEVENS. Well, to be fair, if we stopped giving you money, you would still keep up the program, wouldn't you?

Ms. FAHRER. Well, we don't want to die in a storm.

Senator STEVENS. I understand that.

But would you comply with Federal laws, that is my point.

Ms. FAHRER. I would hate to say that we would not. I think it would be very much harder for us.

Senator STEVENS. You are a commissioner, aren't you?

Ms. FAHRER. Yes, I am.

Senator STEVENS. Is it for county government?

Ms. FAHRER. Yes.

Senator STEVENS. Does your county have tax funds that you use for activities similar to what you have been telling us about this morning?

Ms. FAHRER. Yes, we certainly do.

We use our money to develop our plan, which includes the things that I mentioned. The Keys are unique in that we have almost nothing besides county government. Key West is our only incorporated area.

So our 67,000 people are ours.

Senator STEVENS. God stopped in the United States second in the Keys.

Ms. FAHRER. I beg your pardon?

Senator STEVENS. God stopped in the Keys as the second place in the States. Alaska was first.

It is a beautiful place and you are doing a great deal more in recent years.

I remember when I was in the Interior Department. We started the whole program of trying to save the Key deer and the whole restoration of the Keys. It is really one of the areas that I think demonstrates more than any other place in the country what really sound conservation concepts will accomplish.

You have done a really excellent job down there.

Ms. FAHRER. We are most grateful.

May I make one other comment about the Federal funding?

The coastal States are paying more than their fair share in terms of helping take care of our coastal resources because the interior States participate only through Federal funding. They are not doing the kinds of things the coastal States are doing in the total country's interest.

You mentioned the 80–20-percent figure. When all the interior States are participating through Federal taxes to help the coastal States take care of the problems that have to be solved for the whole country, I do not think that is quite as uneven a participation as it sounds.

Senator Stevens. I appreciate your testimony.

Thank you very much, Ms. Fahrer.

Ms. **Fahrer**. Thank you.
[The statement follows:]

Statement of Alison Fahrer, Chairman, Florida Governor's Coastal Resources Citizens Advisory Committee

Mr. Chairman and members of the committee, my name is Alison Fahrer, I am chairman of Florida's Coastal Resources Citizens Advisory Committee and a commissioner from Monroe County (the Florida Keys). Thank you for inviting me to appear before your committee. I would like to share our committee's perspectives on the important role that the Federal Coastal Management Act and State Coastal Management Programs play in coastal planning, especially in relationship to coastal hazards.

As a Nation, we are becoming more aware of how costly and devastating the effects of hurricanes can be in coastal areas.

Just last year, Hurrican Diane caused three deaths and up to $100 million in damage along North Carolina's coast.

Also in 1984, a minor Thanksgiving weekend storm off Florida's east coast brought $8 million in assessed losses; almost half were public losses in coastal roads, utilities, and recreational facilities. An added $150 million to $200 million will be required to replace the beaches eroded away by the storm. The long-term loss to Florida's tourist industry has yet to be determined.

In 1983, Hurricane Alicia in Texas left behind a legacy of damage and destruction—18 people killed, over 3,000 injured and damages in excess of $1 billion in a six-county disaster area.

A relatively minor storm which hit Florida's southwest gulf coast in June of 1982 caused $15.6 million worth of damages. 84 percent of this damage was covered by private and Federal insurance claims. The remaining costs were covered through Federal, State, and local disaster relief funds. These figures do not include State and local administrative and emergency expenses, only direct disaster relief and damage repairs.

When Hurricane Frederick hit the Alabama coast in 1979, over $2 billion worth of damage occurred and over $200 million in public disaster relief funds were paid.

The last major hurricane to landfall directly in Florida was Hurricane Eloise in 1975. The Fort Walton Beach-Panama City areas most affected by the storm were relatively unpopulated, yet there was still almost $100 million in property losses and damages. If a hurricane hit that same area today, the property losses would total bewteen $1 and $2 billion.

Without doubt, better management of high hazard coastal areas serves the national interest. The Coastal Zone Management Act is essential if coastal States are to continue their present high level of work in protection of natural resources and prevention of improper development in coastal areas. Not only are the dollar losses tremendous due to structural damage in coastal areas, but high winds, storm surge, flooding and erosion destroy lives and and coastal resources as well.

Florida, with two coastlines the length of the State, is doubly vulnerable to coastal storms . . . both in safety and economic terms. Our States' flat topography makes coastal areas especially susceptible to destruction due to storm surge and high winds. Furthermore, as in other coastal States, Florida's population is concentrated along the coast. By the year 2000, we expect that 85 percent of new residents, about 12 million people, will settle in Florida's coastal areas. As development increases along our Nation's coastlines, the potential for loss of life and property grows enormously. Since receiving Federal approval and funding in 1981, the Florida Coastal Management Program has targeted "hazards management" as an area of special focus. We know that over 75 percent of the people living in Florida today have never experienced a hurricane and are unaware of the costly and devastating effects . . . and national hurricane center statistics tell us that Florida is overdue for a major hurricane.

Florida is focusing State, regional and local attention on this problem. We are publicizing not only what to do when a major hurricane hits our highly populated coastline, but how to minimize the loss of life and property over the long term.

Federal CZM grant monies are helping us address the continuum of hazard planning and management projects. We are preparing hazard evacuation plans, hazard shelter studies, hurricane shelter studies, hurricane risk and loss analyses, and also hazard mitigation and post-shelter redevelopment policies to be followed after the next hurricane.

These studies are providing us with a clearer picture of the public costs assessed to coastal storms . . . Federal, State, and local dollars which all taxpayers bear. We are able to show how Floridians can save billions of dollars in future public investments in high hazard areas of regulating development and by establishing sensible mitigation and post-disaster redevelopment policies.

A CZM-funded regional hurricane loss study for the Tampa Bay region of Florida projects that the structural loss from a worst case major storm will amount to over $9.6 billion. These potential costs raise chills, but catch the attention of State and local government officials who will have to pay 25 percent of all disaster relief funds to be eligible for Federal disaster relief.

Hurricane evacuation is a concern of nightmare proportions in coastal Florida. Accurate official warnings can be issued no more than 12 hours before hurricane landfall. Many low-lying coastal roads, causeways, and bridges around the State will be subject to flooding 12 hours or more before the arrival of a hurricane. CZM-funded evacuation studies show that it could take 30 hours to evacuate the Florida Keys; 21 hours to evacuate the southeast coast of Florida (which is made up of Dade, Broward and Palm Beach Counties); 27 hours to evacuate southwest Florida (from Sarasota south to Naples); and 18 hours to evacuate the Tampa Bay area. These studies are helping us develop more realistic plans for the timely and safe evacuation of our coastal residents.

CZM grants have also helped local governments develop and adopt strong hurricane resistance building construction codes to protect life and property and prevent millions of dollars in storm damage when a hurricane hits and total evacuation is impossible.

CZM funds also support local efforts to restrict inappropriate shoreline development based on studies of natural shoreline erosion and change.

Using CZM funds, the State has revised procedures for appraising structural damage following storms. This has helped private developers by making it easier for the State to assess an accurate value on structural damages and to prioritize emergency permitting needed to protect life and property

To augment the National Flood Insurance Program, Florida is using CZM funds to develop storm surge models. These models tell us how much coastal flooding could occur and the distance inland flooding could extend under various storm conditions. The State is regulating beach construction, based on this highly technical information, to minimize structural damage and risk to human life after coastal storms.

Coastal legislation pending before the Florida Legislature would restrict public expenditures for infrastructure to areas on undeveloped coastal barriers . . . complementing the National Coastal Resources Barriers Act. State legislation would also require local governments to develop post-disaster redevelopment strategies.

The programs I have mentioned are all a result of the Federal Coastal Zone Management Act and the impetus it has given to State action. The cooperation of all coastal States in solving their coastal problems has been another invaluable result of the Act. We urge you to support the long-term reauthorization of the Coastal Zone Management Act. Our partnership in providing solutions to coastal zone management problems must not be abandoned.

Senator STEVENS. Our next witness is Mr. Harry Longwell of Exxon Corp., who is accompanied by Donna Black.

Good morning. It is nice to have you here.

Do you have a shortened statement or are you going to present the statement as it was given to us.

STATEMENT OF HARRY J. LONGWELL, VICE PRESIDENT OF PRODUCTION, EXXON CO., U.S.A., ACCOMPANIED BY DONNA R. BLACK, COUNSEL

Mr. LONGWELL. Mr. Chairman, I have a summary statement that I would like to present.

Senator STEVENS. We will print the full statement in the record. Please proceed. We do have some questions for you.

Mr. LONGWELL. Ms. Black, who is an attorney from Los Angeles, also has a written statement that has been submitted to the committee. We would appreciate that being entered into the record also.

Senator STEVENS. Yes, thank you.

Mr. LONGWELL. Mr. Chairman and members of the committee, my name is Harry Longwell. I am vice president for production for Exxon Co., U.S.A.

I am appearing today for the American Petroleum Institute, the National Ocean Industries Association and the Western Oil and Gas Association.

As I mentioned, Ms. Donna Black, an attorney from Los Angeles, is also with me.

The petroleum industry appreciates this opportunity to participate in these important discussions regarding reauthorization of the Coastal Zone Management Act.

We endorse the act's objective of achieving a balanced coastal zone protection and orderly resource development plan.

Unfortunately, the Coastal Zone Management Act has been implemented by some States in a way that defeats this objective. Thus, we believe that reauthorization of the act should be accompanied by certain legislative changes.

These changes, which we describe in more detail in our written statements, would facilitate more orderly and timely OCS energy development. One specific change would define "affecting land and water uses" to limit consistency reviews, the OCS activities which have direct and significant physical effects in the coastal zone.

Other changes would require that the State coastal policies be specific and that States be prohibited from interfering with Federal programs.

The timely development of OCS reserves is necessary to achieve the national goal of minimizing dependency on imported oil. Offshore production of oil and gas currently accounts for about 15 percent of U.S. production, and it is estimated that more than half of future reserves will come from the OCS.

OCS development today has generated nearly $75 billion for the U.S. Treasury. At a time when Congress must make difficult budget and spending choices, development of the OCS, with all of its economic benefits should be strongly encouraged.

Most coastal States have accommodated orderly OCS development. However, as an operating manager with responsibility for Exxon's production operations on the west coast, I can assure you that industry is experiencing substantial delays and unnecessary complications as a result of California's application of consistency to OCS operations.

We are, therefore, concerned that this misuse of consistency will establish a bad precedent for OCS projects in other OCS areas with emerging oil and gas activities.

Let me highlight our concerns about misuse of consistency.

The California Coastal Commission attempts to control nearly all OCS activities whether or not they will affect the coastal zone or are adequtely regulated by Federal agencies, such as the Department of Interior, the Coast Guard, and the EPA.

These controls create a new layer of costly, time-consuming requirements, which do not provide any significant additional environmental protection.

For instance, the Coastal Commission often imposes a partial ban on OCS projects to provide exclusive use of a large OCS area to fishermen during their fishing season.

A prime example is the 7-month-per-year ban in thresher shark fishing areas. In one case, this ban was imposed on an Exxon exploratory project, even though our drilling would have only lasted 100 days and occupied less than 7 acres of the OCS.

Federal agencies reviewing the plan agreed that the drilling would not significantly interfere with fishing. Yet the Commission denied consistency because Exxon would not accept the seasonal restriction. This has prevented the company from delineating a known oil and gas reserve and may make it impossible to complete exploration during the primary lease term.

In another case, Sun Exploration and Production Co. agreed to commence and attempt to complete a well outside the 7-month drilling ban. When Sun was unable to complete the drilling before the fishing season began, it paid to a fishing association $1,000 for each day it drilled during the season. The company ended up paying about $150,000 to the association, even though less than 250 sharks, valued at about $25,000, had been caught the previous year in the entire 100 square mile area encompassing the lease.

Such seasonal drilling restrictions and compensation schemes, which benefit other commercial users at the expense of OCS lessees, are a totally improper use of consistency.

Industry is also hampered by the failure of the California program to set forth specific predictable policies. For example, although nothing in the California program prohibits marine transportation of OCS oil, the Coastal Commission demands that OCS crude be transported by pipeline.

Exxon was one of the first to experience this policy when we attempted to develop our large Santa Ynez unit reserves in the Santa Barbara Channel. The Commission now imposes this policy on all OCS operators.

A recent consistency denial for exploration proposed by Gulf Oil Corp. demonstrates that the Coastal Commission is becoming even more strident in its efforts to block OCS activities. The Commission did not base this denial on any specific environmental objection, but rather on its opposition to further OCS activities in the entire lease sale area.

This demonstrates an alarming lack of concern for the national interest and a strong bias against OCS development.

The solutions to the Coastal Zone Management Act consistency problems we have identified are important to the national interest. Offshore California holds 1.5 billion barrels of recoverable reserves and now accounts for more than 40 percent of the Nation's proven offshore oil reserves. Yet production of these reserves are not keeping pace with discoveries.

Consistency problems which further delay development will only worsen this trend at a time when the nation is increasing its depenence on new OCS reserves to counter growing reliance on imports.

We urge, then, that Congress take action to insure that orderly OCS development is not prohibited by improper implementation of the Coastal Zone Management Act.

As I said at the outset, the petroleum industry supports balanced coastal management. However, future generations must also be able to enjoy the beautiful coastal areas as well as the national security and the economic benefits provided by OCS development.

Thank you for your attention.

This concludes my testimony.

We would be glad to respond to any questions that you might have.

Senator STEVENS. Ms. Black, do you intend to make a statement?

Ms. BLACK. No; I do not.

Senator STEVENS. I have your statement. Staff tells me that it is a very excellent one. I have not yet read it myself, but I will do so.

Ms. BLACK. Thank you.

Senator STEVENS. With the exception of the Alaska situation, your statement indicates primarily problems with California. Is that because that is where you operate or is that because that is where the problems are?

Mr. LONGWELL. I think it is a combination of both, Mr. Chairman.

As you know, offshore California and the Gulf of Mexico are now the two most active areas in the OCS. We have not had the type of problems that we described in the Gulf of Mexico. We feel that those States have been able to reasonably balance their coastal zone management plans and programs with OCS activities.

California gives us a great deal of concern, really, because it is a relatively new and emerging OCS area of activity with significant reserves, and we are concerned that the problems that we have experienced there will set a bad precedent for other new, emerging areas for OCS activity.

Senator STEVENS. Are you having greater problems with California with regard to OCS than you have with regard to their own tidelands, State jurisdictional areas?

Mr. LONGWELL. No, sir; it is really about the same. Part of our major concern is the extension of those laws and regulations that really govern the coastal zone of a tideland area out into the OCS, where there is already adequate Federal Government jurisdiction.

Senator STEVENS. Well, in order to be the devil's advocate, you have lived with the State of California for a series of years within the 3-mile limit. Why can't you live with them beyond the 3 miles?

Mr. LONGWELL. Well, the problems that we have beyond the 3-mile limit is that it is sometimes very difficult to comply with those same requirements that are imposed onshore. There are just many things that are completely impractical to do when you are operating offshore that you may be able to do onshore, or on a land operation.

Then, of course, there is the fundamental question of whether there is really an effect by that OCS activity on the coastal zone which, as we understand the consistency provision, is the main criteria for the State's ruling on consistency.

Senator STEVENS. To what extent do you think those California retrictions apply to the esthetics of the activities we heard about, that is, millions of people going to the beaches, as opposed to real resource protection, just so far as the oceans are concerned?

Mr. LONGWELL. Well, I think, Senator, certainly that has a large impact, just the visual pollution, so to speak.

Senator STEVENS. Well, within the 3-mile limit I can understand that. That is visual pollution to some people.

But your activities are far beyond that, aren't they?

Mr. LONGWELL. In most all cases, yes, sir, we are beyond the sight of land. But, of course, as in other OCS activities, on clear days you can see platforms and operations on the OCS.

Senator STEVENS. You made a reference to the California Coastal Commission's seasonal restrictions and referred to the fact that those would have had an impact on your activities. Did you surmount those restrictions in some way? That "would have had" implies that you did not have to abide by the restrictions.

Mr. LONGWELL. Well, in one case Exxon was able to successfully drill in the window that was recommended and complete the well. But we had then the requirement to drill another well and were not able, with the rig situation and the other requirements, to stay within that window.

So we were not able to comply and appealed that decision and also have it in the courts.

Senator STEVENS. Are you just stepping off to prove up your reserves, or is that an exploratory well?

Mr. LONGWELL. It was an offset to an exploratory well, a definition well, I would say.

Senator STEVENS. Well, I have some other questions to give you for the record. It does indicate to me that you have some problems.

What kind of delays are you incurring in OCS operations as a result of the additional State requirements that you mentioned, which are not part of the States' approved coastal zone management plan?

You imply that there have been additional restrictions read in through the consistency provision. What kind of delays are those?

Mr. LONGWELL. Probably the best example, Mr. Chairman, is the policy on crude transportation by pipeline rather than by tankers. That fundamental question or requirement really has plagued the industry for a number of years.

In Exxon's very large Santa Ynez unit development, which other operators have an interest in, it took us 13 years to get the first of those platforms on production—basically revolving around that issue.

We have been working for about 3 years to obtain expansion of that development to bring on about another 300 to 400 million barrels, a very significant reserve. The debate centers on how that crude will move to market.

Other operators up around Point Conception on the western end of the channel, Chevron and Texaco, have also encountered delays in their projects and in some cases have agreed to build pipelines down into the Los Angeles area for processing of that crude.

That is probably the best example. There are numerous examples just in terms of daily operating practices, that is, how much pollution control equipment you will have on the OCS, air emission regulations, discharge requirements. All of these requirements are clearly within the Federal jurisdiction of the EPA or the Department of the Interior. These delays are in the order of several months, up to a year. In terms of being able to move forward with an exploratory well, for example, such delays make it difficult to define the leases that have been acquired.

Senator **Stevens**. Your statement implies that the counties of California are adding to the requirements of the coastal zone management plan by changes in county laws. Can you give us some examples of that? Is that taking place in a manner that affects your operations? Is it in exploration as well as in the production phase? Where is it hitting you?

It would hit you automatically even under the Supreme Court decision in the production phase. But is it hitting you in the exploration phase?

Mr. **Longwell**. Yes, sir, it is.

Each of the counties, cities, and other communities, has a local plan that it is developing. In many cases, the things that I quoted with regard to crude transportation and other operating practices that I enumerated are being incorporated into these local plans, primarily with the effect of extending jurisdiction out on to the OCS. Those certainly have resulted in delays on both the exploration and production side.

Senator **Stevens**. The Supreme Court decided in 1984 that consistency, as it stands in Federal law, applies in the postexploratory period, in the development and production stage—pardon me, in the exploration stage and the production stage, but not in the leasing stage.

How has this impacted your operations now? Has it led to any greater stability in terms of your relationships with the local governments and State governments?

Mr. **Longwell**. Senator, the one example that I quoted, the *Gulf Oil Corp.* example, where they were denied consistency, is in the area where the State had asserted consistency prior to the lease sale in the northern part of California, in the lease sale 73 area. The best we can tell, that operation, in terms of the exploration and production, was denied consistency, really, over that lease sale dispute. If the courts would not permit the State to have consistency review prior to the lease sale, then they would exercise it at their choice after the lease sale on the exploration plan.

That is probably the best example as to where, even though we have had a Court ruling, our industry has not been able to operate in the area because of the misuse of consistency in the exploration plan.

Senator **Stevens**. That's really what I was getting at.

Doesn't the fact that consistency exists at the exploration and production stage mean that you, as an executive of the industry looking to develop the OCS, must accommodate your views at the leasing stage, anyway?

Mr. **Longwell**. Well, certainly there are existing provisions within the OCS Lands Act which provide for consultation with the States prior to leasing. The consistency, though, as it is currently written and as we think it is intended in the act, is really just for those activities that are affecting the coastal zone. We think that is really where the misuse is taking place, the extension into the OCS activities.

Senator **Stevens**. How do you think this process really works now in California, following that Supreme Court decision?

Mr. LONGWELL. Well, I think it is going to be very difficult. We are likely to continue to have examples, like the *Gulf* case when we try to move forward—unless Congress, through this reauthorization, is much more specific in terms of what consistency applies to.

We think that the State, with a license to apply it very broadly, will, in effect, be able to circumvent previous judicial rulings on the subject. I think that is probably the strongest reason as to why we need the act to be more specific in terms of defining what is an effect on the coastal zone land and water uses.

Senator STEVENS. How do you think the coastal States have interpreted that particular section that you just mentioned? That is section 307(c)(3): consistency reviews are appropriate only where a proposed OCS activity will affect land or water use in a coastal zone?

Has this been interpreted in your opinion more broadly than you thought it should be?

Mr. LONGWELL. I think only our experience today would indicate that only in California has that interpretation been very broadly interpreted.

Ms. Black might want to add to that.

Ms. BLACK. I think that is correct.

The example that Mr. Longwell gave in his testimony of the seasonal restriction, the ban on drilling, during the commercial fishing season for the thresher shark is a good example of that. Fishing for thresher shark is taking place on the OCS. It does not take place within the coastal zone, and there is not really a nexus demonstrated by the Commission between that activity and anything that takes place in the coastal zone.

That is one example of how we believe the Commission has broadened out its powers to regulate something that takes place in or affects or waters in a coastal zone and/or water uses in the coastal zone, and something that takes place far outside of that.

There have been a few other examples. There was an example in Maine and Massachusetts of attempting to regulate water discharges on drilling activities that took place about 100 miles from shore. Again, our position there would be that this is not something where there was an effect shown on land and water uses.

Mr. LONGWELL. I might add, Senator, that a proper definition of affecting land and water use is what we view as the most important correction of the act that needs to be made in order to have a balanced program in new OCS areas.

Senator STEVENS. I am informed that NOAA's draft study that was released recently makes the statement that the current Federal consistency provisions are not perfect but are working well, and states that for the fiscal year 1983, the individual States concurred about 96 percent of the over 750 activities reviewed under the act.

Does that comply with your feelings about existing consistency provisions?

Mr. LONGWELL. Senator, we, of course, are familiar with that report. We have just had an opportunity to briefly review it.

The statistics that are quoted, of course, give no weight to the size or to the gravity of the various decisions that were made. There were numerous, very small, activities that were permitted in the coastal zone and OCS. The examples that I quoted to you involving very large projects of significant benefit, both to the coastal area and to the Nation, we think really outweigh just the numerical recitation of the handling of those permits and consistency verification.

The other thing that is hidden in those statistics is the fact that in many cases, particularly OCS activities offshore California, consistency certifications are granted only after numerous restrictions and other agreements are reached which, in many cases, we think is an outreaching of State jurisdiction. But on an individual case basis, operators will agree to do it, just to be able to go ahead and move the program.

Senator STEVENS. That is what I asked you before.

You were saying that the leverage of the consistency provision as it stands, as it stands now in existing law, actually gives the States and local governments considerable leverage over operators.

Mr. LONGWELL. Yes, sir. There is no question about that. It certainly does.

Senator STEVENS. We have some questions that have been submitted about the California Coastal Commission and the State Lands Commission that I think would be more properly answered for the record. We would like to submit them to you. Either you or Ms. Black can respond to them. They refer to the economic consequences of actions by those two commissions.

I would like to submit them to you and ask you to respond to them for the record.

Mr. LONGWELL. We would be happy to.

Senator STEVENS. I do appreciate your testimony and appreciate the paper that you prepared, Ms. Black. We will refer to it in the course of the deliberations by the committee.

Thank you very much.

Mr. LONGWELL. Thank you, Senator.

Ms. BLACK. Thank you.

[The statements follow:]

STATEMENT OF HARRY J. LONGWELL, VICE PRESIDENT OF PRODUCTION, EXXON CO., U.S.A. FOR THE AMERICAN PETROLEUM INSTITUTE, THE NATIONAL OCEAN INDUSTRIES ASSOCIATION, THE WESTERN OIL AND GAS ASSOCIATION

Mr. Chairman and members of the Committee, my name is Harry J. Longwell and I am Vice President for Production for Exxon Company, U.S.A. I am appearing today on behalf of the American Petroleum Institute [API], the National Ocean Industries Association [NOIA] and the Western Oil and Gas Association [WOGA]. API and WOGA are petroleum industry trade association that represent over 230 companies and 6,000 individuals engaged in producing, refining, transporting, and marketing petroleum and petroleum products in the United States. NOIA is an association of 450 companies engaged in every aspect of the offshore industry. The trade associations represented here today appreciate the opportunity to participate in these important considerations regarding reauthorization of the Coastal Zone Management Act [CZMA].

Industry endorses the basic objective behind the CZMA: to achieve a balance between resource protection and orderly coastal development. Regrettably, not all of the states that have enjoyed the benefits of the financial and other incentives created by the CZMA have achieved such a balance in their programs. Instead, the CZMA has been implemented by some states in a way that not only frustrates the orderly use and development of the coastal zone but also runs counter to the clear national objective of reducing dependence on imported energy.

With relatively stable energy prices and a current surplus of world crude oil production, it is fairly easy for the nation to become complacent about basic energy issues. However, the sobering fact is that over the past 15 years the nation's proven oil and gas reserves have dropped by nearly one-third. In spite of conservation efforts and record drilling levels, we are still consuming more oil and gas than we discover. Oil imports are once again on the upswing and are forecasted to reach 40 percent of total U.S. oil supply by 1990. Maximizing domestic production from conventional oil and gas reserves is one of the keys to reducing our dependence on imported energy. Because the Federal OCS is estimated to hold more than half of the nation's future oil and gas reserves, its development is an indispensable part of the nation's goal to minimize our dependency on imported oil.

The energy resources of the OCS are also important to the country from a fiscal standpoint. Bonuses from OCS leasing and royalties on the six billion barrels of crude oil and the 60 trillion cubic feet of natural gas produced from the OCS to date have generated nearly $75 billion dollars for the U.S. Treasury. During the last five years alone these bonus and royalty revenues have averaged about $8 billion per year. In addition, the oil and gas industry and the numerous service companies that operate on the OCS pay a significant sum to the federal government in the form of income and excise taxes and fees which are directly attributable to OCS energy activities. It seems ironic that the CZMA would be allowed to delay or prevent orderly development of these OCS resources which can contribute so much to Federal revenues at a time when the Congress is being asked to make very difficult decisions regarding the budget and spending choices.

Last year, the Supreme Court resolved a major CZMA problem by ruling that OCS lease sales are not subject to federal consistency review. Industry believes that it would be unnecessary, unwise and contrary to the national interest for Congress to take actions which would reverse this decision. States have adequate opportunity to participate in OCS lease sale decisions through consultation procedures established in Section 18 and 19 of the Outer Continental Shelf Lands Act. Under Section 307(c)(3) of the CZMA the states also retain significant authority to review post leasing activities such as the exploration, development, and production plans for consistency. However, the industry's problems with consistency did not end with the resolution of the OCS leasing issue.

Fortunately, most states have not misused their consistency authority over OCS projects. In the Gulf of Mexico OCS area, for instance, states have achieved balanced coastal management which accommodates orderly OCS development. But as an operating manager who for several years was directly responsible for Exxon's oil and gas production operations on the West Coast, I can assure the Committee that on a day-to-day basis, the industry is experiencing substantial delays and unnecessary complications in OCS exploration, development and production operations in California because of that state's misapplication of consistency. Specifically:

Industry's efforts to explore and develop OCS energy resources are seriously affected by restrictions and conditions imposed on OCS operators; and

The authority and jurisdiction of the federal government over OCS oil and gas activities are being undermined.

These problems are not mere irritants. They include delays of months or years to OCS oil and gas projects whose costs are very time-dependent.

Although our most critical CZMA problems to date have occurred in California, the potential exists for other states to follow the precedent established by California in their implementation of the CZMA. Therefore, we urge that any reauthorization of the Act be tied to changes which address these problems. Our recommendation is that legislative action be taken to:

Reaffirm the balance between OCS energy development and protection of the coastal zone;

Clarify the existing limitation on state consistency reviews of OCS projects;

Require specific, predictable coastal program policies; and

Simplify the Secretarial appeal process.

Let me explain with examples how the consistency authority is being improperly used and describe the adverse effect that this misuse is having on the nation's offshore oil and gas exploration and development efforts.

IMPROPER USE OF THE CONSISTENCY AUTHORITY

Perhaps the most serious CZMA problem is the tendency of some states to extend their consistency beyond its intended scope. The consistency provisions of the CZMA gave states the ability to participate in the OCS process which otherwise is within the exclusive realm of federal jurisdiction. Congress recognized the unique power of this new authority and set specific statutory limitations on its use.

First, consistency reviews of OCS activities are allowed under the CZMA only where a proposed OCS activity will affect a land or water use in the coastal zone.

Second, states are prohibited from using consistency in a way which would undermine, diminish, or supersede federal jurisdiction and responsibility.

Unfortunately, some states have not recognized these limitations. Instead of confining consistency reviews to those aspects of proposed OCS oil and gas projects which have effects on land or water uses in the coastal zone, these states have attempted to control nearly every aspect of an OCS project, including operations and facilities that take place solely on the OCS and which have no physical effects on the coastal zone.

In addition, Congress never intended to provide states with the opportunity to second-guess and overrule federal agencies' judgment and expertise concerning specific requirements for operations that take place on the OCS. For example, the advice of the Minerals Management Service [MMS] is often ignored or disputed by some states, despite this agency's expertise in many highly technical areas related to the engineering, design and geological safety of OCS projects. In the past, the California Coastal Commission has intruded into many aspects of OCS projects which are already stringently regulated by DOI, such as the geological safety of the OCS location of exploratory drilling rigs, platforms, and pipeline routes; the amount of oil spill containment equipment to be kept on the OCS facilities; and even the drillpipe and casing to be used.

The California Coastal Commission has also used consistency to supersede Coast Guard decisions regarding navigation safety on the OCS. In one instance the Commission insisted that oil companies install automatic radar devices on their drillships as a condition for obtaining consistency concurrence. This requirement was imposed despite the Coast Guard's advice that both the drilling rigs and the ships moving through the area were already equipped with sufficient navigational aids and equipment to minimize collision risks. This is also an illustration of a state extending its jurisdiction to activities that are already stringently regulated by the Federal government. This dual layer of regulation is economically inefficient and does not provide additional environmental benefits. Moreover, it tends to pre-empt federal jurisdiction in the OCS.

Congress also singled out two major federal laws—the Clean Air Act [CAA] and the Federal Water Pollution Control Act [FWPCA]—for special consistency treatment; it provided that compliance with programs developed under these two federal laws are to be the only standard used for determining consistency as to air and water quality aspects of proposed activities.

States should not be allowed to use consistency to enforce their own air and water quality programs which differ from those created by Federal law. Section 307(f) of CZMA prohibits states from imposing through their CZMA authorities any air or water quality protection requirements that are different from those established by the regulatory program developed under these two statutes.

Instead, the state coastal agency must incorporate the regulatory programs that have been imposed under the FWPCA and CAA into its state program, and the requirements of such programs are the only ones that can be applied to activities undergoing consistency review.

Two federal air and water quality protection regulatory programs developed pursuant to the FWPCA and CAA are applicable to OCS facilities and activities. The National Pollutant Discharge Elimination System [NPDES] permit program, created by section 402 of the FWPCA, is administered and enforced on the OCS by EPA and DOI. General or individual permits for discharges under this program are issued by EPA after full opportunity for state agencies and public participation is provided. An air quality regulatory program promulgated pursuant to the Clean Air Act and the Outer Continental Shelf Lands Act [OCSLA] is also enforced on OCS activities. DOI's air quality regulatory program implements those provisions of the CAA applicable to the OCS.

Despite Section 307(f), states have used the consistency process to impose conditions, restrictions, and limitations on OCS activities which are beyond those required by these air and water regulatory programs. Unnecessary conditions and restrictions on NPDES water discharge permits for OCS activities, which would not otherwise be imposed by EPA, have been demanded. In addition, the California Coastal Commission has frequently attempted to use consistency review to impose air quality standards on OCS facilities that are different from the federal requirements imposed pursuant to the OCSLA and CAA. Section 307(f) was intended to prohibit such state interference in air and water quality regulatory programs created pursuant to the FWPCA and CAA.

A somewhat different example of the misuse of the consistency process is the imposition of seasonal restrictions on OCS operations by the California Coastal Commission to ensure that commercial fishermen have exlusive use of OCS areas during their fishing seasons. It is important to note that the commercial fishing at issue is taking place on the Federal OCS, outside the state's coastal zone, where the Federal government exercises exclusive jurisdiction to regulate competing commercial uses. Nonetheless, the Commission imposed a seven-month per year ban on Exxon's OCS exploratory drilling to protect thresher shark fishermen from possible economic impacts resulting from these operations. Exxon's proposed drilling activities were expected to be completed in less than 100 days and would occupy only 6.5 acres of the vast area offshore California where the highly migratory thresher sharks are found. Therefore, these operations would have had little or no impact on commerical fishing operations in the vicinity of Exxon's well. On the other hand, such a seasonal drilling prohibition would have reduced the time within the five-year primary lease terms that Exxon had to actually drill to only a little over two years.

With such seasonal restrictions on drilling, it would be virtually impossible for OCS lessees to complete exploration and proceed with development plans during the five-year primary lease term, thus slowing the pace of the national OCS program.

We believe that this is a problem which should be of particular interest to Congress since misapplication of the CZMA by some states is preventing the proper implementation of the Outer Continental Shelf Lands Act. The seasonal drilling restriction, for example, seriously impedes DOI's ability to fulfill its statutory obligation to ensure the "prompt and efficient exploration and development of a lease area" as required by the OCSLA.

Another example of state misuse of the CZMA consistency provisions involves attempts to coerce OCS lessees, who have paid substantial amounts for the right to explore and develop the OSC, to compensate other commerical users of the OCS. In one case, an oil company had to agree to pay $1,000 to a California fishing association for each day of the fishing season that OCS drilling operations took place. The company ended up paying over $150,000 to the association to compensate for the alleged interference with commercial thresher shark fishing in a less than 10-acre area of the OCS. Ironically, in the previous year, the California Department of Fish and Game statistics indicated that less than 250 sharks (approximate value $25,000) had been caught from the entire 60,000 acre fishing block in which the exploration activities would take place.

We believe it is totally inappropriate for such unreasonable and inappropriate financial compensation requirements to be imposed on OCS operators through consistency.

LACK OF SPECIFIC POLICIES IN COASTAL PROGRAMS

Offshore oil and gas operations ar also hampered by the failure of states to incorporate specific, predictable policies into their coastal programs. OCS operators have had tremendous difficulty over the last few years determining whether proposed activities included in OCS projects are consistent with the California Coastal Management Program because the policies established in the program are so generalized and ambiguous. The California Coastal Commission uses very general statements in its programs to arbitrarily impose very specific standards, limitations, and prohibitions on OCS operators. These limitations are identified and "adopted" by the Commission on a piecemeal basis as it considers individual permit and consistency applications. Consequently, consistency with the California program is an ever-moving target. Despite extensive preparation, OCS operators never know whether some new requirement or mitigation measure will be demanded at the last minute. This is an inequitable situation clearly not intended by the CZMA.

Exxon has experienced this problem first-hand in its attempts to develop a very valuable reserve in the Santa Barbara Channel called the Santa Ynez Unit. This 19-lease unit is one of the largest oil and gas reserves in the continental United States; holding an estimated 300-400 million barrels of oil and 600-700 billion cubic feet of natural gas. Exxon's development plans called for the continued use of U.S. flag tankers to transport the crude to refineries.

Although there is nothing in the California program which prohibits marine transportation of oil produced offshore California, the Coastal Commission would not allow this project to proceed unless Exxon agreed to transport their crude oil by pipeline. Other OCS operators have been subject to the same pipeline demand for their projects. The Commission based this demand on its interpretation of vague environmental protection policies. Thus, the Commission has created what is, in effect, a requirement that oil produced offshore California be moved by pipeline to refinery destinations instead of by tankers even though there is no such policy in the state program. The Commission has managed to enforce this requirement on all OCS operators without any attempt to officially incorporate it into the state program.

A final example of this problem was the recent case in which the California Coastal Commission denied consistency for an exploration project proposed by Gulf Oil Corporation. Even though the Commission found that maximum feasible mitigation had been offered by Gulf, it denied consistency on the nebulous basis that the public welfare would not be promoted. The Commission concluded that "it would be inexpedient and unwise at this time to expand oil and gas operations. . .until previously leased tracts are fully explored and developed." This seems to us to demonstrate an alarming lack of concern for the nation's interests in developing needed domestic energy resources.

A somewhat different but related problem has been the incorporation of local coastal programs into state coastal programs without going throughthe formal amendment process. These local programs often contain very significant requirements that directly affect oil and gas development. Consequently, their incorporation can constitute substantive modifications to state's approved plan. Attempts were made in both California and Alaska to bypass the amendment process in adopting local programs. This should not be allowed. Significant local coastal programs should be adopted only by an amendment to the state plan, thereby ensuring the use of a process that allows for adequate notice, public hearings and opportunity for comment and consultation.

PROBLEMS WITH THE APPEAL PROCESS

Finally, industry's problems with the state's application of federal consistency to OCS projects are compounded by the unavailability of a simple, rapid appeal process. Override decisions are never forthcoming within the 90-day time period contemplated by NOAA's regulations. Exxon's appeal of the consistency denial for the Santa Ynez Unit development project was pending before the Secretary of Commerce for 19 months before the parties requested a stay while a settlement was negotiated.

In Exxon's Santa Rosa Unit appeal, which challenged the Coastal Commission's attempt to impose seasonal prohibitions on OCS drilling, Exxon waited eight months for the Secretary's decision.

A practical, expeditious appeal process is critical if the override procedure is to be of any real benefit. The CZMA clearly contemplates the availability of an expeditious process through which the federal government can override consistency denials that could preclude projects which are necessary to the national security and defense or will result in important national interest benefits.

PROPOSED SOLUTIONS

I have indicated some of industry's major problems with the implementation of the Coastal Zone Management Act. Now let me tell you our proposed solutions. We believe legislative action needs to be taken to accomplish the following:

First—Congress must emphasize the compatibility of the national goals and objectives contained in the CZMA and the Outer Continental Shelf Lands Act. The balance between OCS energy development and protection of the coastal zone should be reaffirmed and use of state management programs to frustrate the national goal of developing OCS oil and gas resources should be prohibited.

Second—There should be a limit on the scope of the consistency review process to ensure that states:

Review only those aspects of OCS projects which have direct and actual effects on land or water used within the coastal zone;

Do not apply consistency in a manner which interferes with or is inconsistent with federal regulatory programs; and

Third—States should be prohibited from applying vague and ambiguous policies to consistency review. State coastal policies should be clearly articulated and directly linked to the objectives of the Act.

Fourth—The existing criteria for a Secretarial override to ensure expeditious decisions on consistency denials must be clarified and improved.

WHY ARE CONSTRUCTIVE CHANGES TO CZMA NEEDED?

Our nation's main hope for minimizing dependence on insecure oil imports lies in the Federal OCS where a large portion of the nation's future oil and gas discoveries are expected to occur. This expectation is fast becoming reality. Data published by the Department of Energy clearly shows that an increasing percentage of U.S. proved reserves are located offshore. In fact, offshore oil reserves increased from only 7.3 percent of the U.S. total in 1977 to 12.4 percent of the total in 1984. Also, it's interesting to note that much of this growth occurred offshore California which grew from about 16 percent of U.S. offshore reserves in 1977 to 41 percent in 1984.

Unfortunately, however, these valuable California oil reserves are not being developed and produced at the same dramatic rate at which they are being discovered. The ratio of oil reserves to current production in barrels per year is a good measure of how efficiently oil reserves are being produced. For offshore California, this ratio has increased from 17 years in 1977 to 21 in 1983. The average ratio for the total U.S. offshore is only nine years. This suggests that development and production of offshore California reserves has not kept pace with their discovery. Consistency related regulatory delays in bringing offshore California reserves onstream will only worsen this trend at a time when the nation is becoming increasingly reliant on imported oil. Unless the Congress takes action, our dependence on imports will only get worse at huge costs to our economy and our national security.

The unauthorized actions of states under the guise of federal consistency should not be allowed to frustrate vital national energy policies. We urge Congress to enact the changes to CZMA we have recommended to ensure that future generations enjoy not just the beautiful coastal areas, but also the national security and economic prosperity that our OCS energy resources can help provide.

STATEMENT OF DONNA R. BLACK ON BEHALF OF THE WESTERN OIL AND GAS ASSOCIATION

Mr. Chairman and members of the Committee, my name is Donna R. Black and I am an attorney with the firm of McCutchen, Black, Verleger & Shea in Los Angeles, California. I am submitting this testimony on behalf of the Western Oil and Gas Association ["WOGA"]. WOGA is a petroleum industry trade association whose members conduct much of the producing, refining, transporting and marketing of petroleum and petroleum products in the Western United States. WOGA appreciates the opportunity to participate in these important considerations regarding the reauthorization of the Coastal Zone Management Act ["CZMA"].

As a general matter, we believe that most coastal states have used their CZMA consistency authority in a reasonable manner. A few states, however, are misusing their authority and this, combined with the failure to adequately enforce the Act by the National Oceanic and Atmospheric Administration ["NOAA"], has operated in some instances to limit or block activities on the OCS. In order to resolve these problems, we recommend that Congress take steps to accomplish the following:

1. Limit states' consistency authority to those portions of a Federally licensed or permitted activity which affect land uses or water uses in the coastal zone;
2. Prevent states from acting in a manner inconsistent with existing Federal regulatory programs;
3. Rectify deficiencies in the time periods allowed for completion of the consistency process; and
4. Strengthen Federal oversight responsibility and ensure that any additions or significant changes to state programs are processed as formal amendments to the states' approved CZMA programs.

In general, we believe that the CZMA is a beneficial piece of legislation which, in most cases, has worked very well. Many states have developed coastal management programs that achieve a workable and balanced approach to coastal resources management. Other state programs, however, fail to provide for balanced use and protection of coastal resources. Instead, they attempt to protect the environment against all perceived impacts, with little or no recognition that trade offs between complete resource protection and responsible coastal development are required under the CZMA. The failure of such programs to strike a balance between coastal resource protection and coastal-dependent development has impeded the national objectives of energy self-sufficiency and the Federal stewardship of OCS and other Federal lands. WOGA is hopeful that Congressional action in the areas discussed below will serve to remedy these problems.

These suggested changes largely pertain to perceived deficiencies in Section 307(c)(3) of the CZMA. The major issue faced by industry with regard to the other consistency provision in the Act, Section 307(c)(1), was whether outer Continental Shelf [OCS] lease sales are subject to consistency. That question was resolved by the United States Supreme Court in *Secretary of the Interior* v. *California*, 104 S.Ct. 656 (1984), wherein the Court concluded that OCS lease sales are excluded from the consistency provisions of the CZMA. In addition to recommending changes to strengthen certain of the Section 307(c)(3) consistency provisions, WOGA would oppose any effort, legislative or regulatory, to reverse or in any way modify the Supreme Court's decision with regard to Section 307(c)(1) as applied to OCS lease sales.

1. Limitation of States' consistency authority.—The Federal consistency provisions of the CZMA create in the states a powerful new authority: the ability to participate in a regulatory process which is otherwise within the exclusive realm of Federal jurisdiction and responsibility. Perhaps because it recognized the uniqueness and potential of this new authority, Congress set specific statutory limitations on its use by indicating in Section 307(c)(3) that consistency reviews are appropriate only where a proposed OCS activity will affect a land or water use in the coastal zone.

We have found, however, that some states often virtually ignore this requirement, particularly with respect to offshore oil and gas exploration and development activities taking place on the OCS. Instead of confining their review to those portions of proposed OCS projects which have or are likely to have effects on land or water uses within the coastal zone, these states have attempted to control through their consistency review many other aspects of OCS projects, including the equipment requirements and day-to-day operations on the OCS facility which do not themselves affect any land or water use in the coastal zone.

For example, the States of California, Massachusetts and Maine have attempted to restrict OCS oil and gas activities for the sole purpose of protecting the economic interests of other commercial ventures conducted on the OCS. For example, the California Coastal Commission has adopted the practice of imposing seasonal drilling restrictions on OCS activities for the purpose, among others, of protecting the economic interests of commercial fishermen who operate outside the coastal zone, without any reasonable showing that land or water uses in the costal zone will be affected if the OCS activity is conducted.

Such actions are totally inconsistent with the Act's basic premise that its consistency provisions do not apply to Federal permit activities occurring outside the coastal zone unless they would impair the State's ability to protect resources within the coastal zone. Both the language and legislative history of the CZMA demonstrate that such activities were never intended to be within the scope of that Act.

The application of Federal consistency to OCS projects located many miles from the coastal zone is another example of how the consistency authority is inappropriately applied when there is no effect on a land use or water use in the coastal zone. The states of Maine and Massachusetts, under the guise of a consistency review, attempted to impose restrictions on the Environmental Protection Agency's water discharge permits for drilling activities that were proposed for locations over 100 miles from shore. The State of Alaska asserts consistency review authority for exploratory operations no matter what the distance is from the coastal zone. Given the limitation that an effect on a land or water use is necessary to trigger the consistency review, these are clearly inappropriate exercises of consistency authority.

Based on the foregoing, we believe that the term "affecting land or water uses in the coastal zone" demands a more clearly articulated statutory definition. Only those aspects of OCS activities that have an actual, physical impact upon a land use or water use in the coastal zone should be subject to state consistency constraints.

2. Interference with Regulatory Programs of Federal Agencies.—Section 307(e) of the CZMA indicates that state consistency review authorities are not intended to diminish Federal ". . . jurisdiction, responsibility, or rights . . ." or to be regarded as ". . . superseding, modifying, or repealing existing laws applicable to the various agencies. . . ." This provision prohibits the use of consistency authority by a state coastal agency in a manner which would undermine, usurp, or otherwise interfere with the regulatory authority of Federal agencies on the OCS. Nevertheless, improper use of consistency by some states undermines the OCS regulatory programs of Federal agencies and has serious effects on the ability of these Federal agencies to properly implement their statutory responsibilities.

OCS oil and gas exploration, development, and production activities are regulated by one of the most complex and complete regulatory programs ever administered by the Federal government. This Federal program is largely the responsibility of the Department of the Interior ("DOI") pursuant to the provisions of the Outer Continental Shelf Lands Act [OSCLA]. Other Federal agencies, including the U.S. Coast Guard, the Environmental Protection Agency, the Corps of Engineers, and the National Marine Fisheries Service, have oversight responsibilities and/or regulatory programs which supplement the DOI's authority. These Federal programs are carefully planned to ensure both expeditious development of valuable OCS oil and gas resources and full protection of the affected environment. When a coastal state attempts through consistency to impose new requirements, mitigations or prohibitions on OCS operators which contradict, supersede or alter the Federal program, the balance which Congress has created to ensure that orderly, environmentally safe OCS exploration and development occurs is upset and the Federal programs are undermined.

Attempts by California and others to impose seasonal drilling restrictions on OCS activities provide an excellent example of how the Federal OCS program can be adversely affected by states' actions. These requirements result in a decrease in the amount of time which the lessee has been granted, under its Federal lease, to conduct its operations and, in one case, resulted in the primary lease term being reduced from five years to a little over two years. The cumulative impact of such restrictions would be to substantially delay offshore exploration and development and make it difficult for the MMS to fulfill its statutory obligation to ensure that lessees are prompt and diligent in carrying out their offshore activities.

In addition, while coastal states are justifiably concerned about preventing oil spills, they have on some occasions extended themselves into areas which are rightly the domain of Federal agencies. An example of how the California Coastal Commission has acted on the oil spill clean-up issue illustrates this point. The Minerals Management Service [MMS], the Federal agency responsible for requiring state-of-the-art oil spill clean-up equipment, has previously determined that 1,000 feet of containment boom is adequate for containing small oil spills. The Commission, on the other hand, has apparently concluded that 1,500 feet of containment boom is necessary and now conditions its approval of exploration plans to include the more stringent 1,500 foot requirement. In a letter to Mr. John McLeod, Acting Evaluations Officer, Office of Ocean and Coastal Resource Management, dated August 17, 1984, the MMS has stated that it knows of no objective information to indicate that the 1,500 foot requirement is justified. Clearly, the Commission's action is an unwarranted assertion of authority in an area where it has little or no regulatory expertise.

Responsibility for navigational safety is vested in the U.S. Coast Guard. In this area, as well, some states have sought to supersede these existing Federal authorities. For example, on consistency applications for OCS Leases P-0203 and P-0205, the Coast Guard has testified at the California Coastal Commision's public hearings that drilling vessel locations for these two leases do not pose an unacceptable risk for navigation safety. Despite this testimony, the Commission still denied consistency on the basis, among others, of interference with vessel safety. In another instance, the Commission insisted that oil companies install automatic radar devices on their drillships as a condition of obtaining consistency concurrence. This requirement was imposed despite the Coast Guard's opinion that both the drilling rigs and the vessels that move through the area are already equipped with sufficient navigational aids and equipment to minimize collision risks.

A final example concerns air quality. This is a paticular problem in California. The California Coastal Commission has consistently sought to gain effective control of air quality regulation for offshore operations. In *State of California* v. *Kleppe*, 604 F.2d 1187 (9th Cir. 1979), however, the Ninth Circuit affirmed that the Secretary of the Interior, not the State of California, has exclusive jurisdiction to regulate air emissions from OCS facilities. The Commission has continued, notwithstanding this decision, to object to regulatory requirements established for offshore operations. For example, the MMS recently was successful in negotiating an agreement with the State of California, through the Office of the Governor, for lease sale stipulations for OCS Lease Sale No. 73 offshore California to assure air quality protection. While the Commission agreed after the fact that conditions established in a Memorandum of Agreement with the State did appear to satisfy coastal program air quality provisions, the Commission still filed a lawsuit to block the sale. Similarly, with regard to OCS Lease Sale No. 80, an "eleventh hour" agreement with the Commission, which included air quality requirements in excess of those previously agreed to by the Federal government and the State of California, was necessary to avoid litigation against the lease sale.

3. Time periods for completion of consistency process.—While the consistency regulations of the National Oceanic and Atmospheric Administration [NOAA] at least imply that three months is a reasonable time in which to make a consistency decision (15 C.F.R. § 930.63 requires notice to the Federal agency and the applicant, if the determination process exceeds three months, stating "the basis for further delay"), states routinely utilize the maximum six-month period to decide each consistency application.

More specific guidelines could rectify this problem by designating both the specific point in time when state review commences, and a specific length of time which the process may not exceed. Along these lines, we would suggest, at the least, that the present implied three-month time period should be converted into a statutory deadline.

Furthermore, an OCS operator's remedy where consistency has been denied is the Secretarial appeal process. As it is currently structured, the statutory process has not resulted in expeditious decisions. Establishment of mandatory timeframes for an appeal decision would allow companies to identify the approximate date when it will be possible to make funding and other long-range financial planning decisions essential for multi-million dollar oil exploration and development projects.

4. Need for increased Federal oversight responsibilities.—We believe there is an urgent need for NOAA to exercise the supervisory and oversight responsibilities created in Section 312 of the CZMA to ensure that state programs are implemented in a equitable and balanced manner, and that the Federal consistency authority is properly exercised and applied. Such oversight should be directed toward ensuring that state coastal programs strike a balance between protection and development of resources, and should be particularly stringent where energy or other types of projects which will result in important national interest benefits are involved.

On several occasions, we have advised NOAA of our concerns with the manner in which states have been interpreting the CZMA and implementing their coastal management programs. These have included meetings between WOGA and NOAA officials during Section 312 review of the California program and submission of written comments to that agency by WOGA on Federal consistency issues.[1] Although NOAA has just issued a draft Federal consistency study, our preliminary review of this document demonstrates that it does not respond to the numerous industry objections concerning unauthorized state interpretation and implementation of the CZMA. Accordingly, there is nothing to indicate that the oversight and supervisorial role accorded to NOAA in Section 312 of the Act will be effectively assured in the future.

There is one particularly telling example of NOAA's failure to enforce the CZMA. The Act require that any additions or significant changes to state programs must go through the formal amendment process set forth in Sections 306(g) and 306(c) of the Act. Many changes in these programs, like the addition in California of Santa Barbara County's pipeline policy which requires a stringent showing in order to justify crude oil transportation out of the County by means other than pipelines, constitute substantive modifications to a state's plan. Yet some states are advising NOAA that these modifications should be processed by routine program implementation [RPI], a purely regulatory device, unauthorized by the CZMA, which allows minor changes in a state's coastal program to become part of the state program without notice, public hearings, citizen and industry input, or interagency and intergovernmental consultation. *See* 15 CFR § 923.84.

In other cases, states are imposing substantive requirements on OCS operators based upon "policies" that have not been incorporated into the state's approved coastal program. These ambiguous, general policy statements are "adopted" by the states on a piecemeal basis and are used to arbitrarily impose very specific standards, limitations and prohibitions. This results in the continuous establishment of new, unarticulated consistency criteria which applicants are required to meet, but which have not been the subject of Federal program review requirements.

Based on the foregoing, we recommend that Congress direct NOAA to increase its Federal oversight responsibilities, including revising its regulations to require that any additions or substantive changes to state programs be incorporated only as amendments to approved CZMA programs and only after adhering to the formal amendment procedures set out in Sections 306(g) and 306(c) of the Act.

5. Conclusion.—In summary, we believe that the most important objective in considering the CZMA for reauthorization should be to restore and achieve a proper balance between the protection and development of coastal resources, and between the proper roles of State and Federal governments in implementing the OCSLA and CZMA programs. In this regard, we recommend that the following procedural and clarifying remedies be considered:

(a) Limit states' consistency authority to those portions of a Federally licensed or permitted activity which affect land uses or water uses in the coastal zone;

(b) Prevent states from acting in a manner inconsistent with existing Federal regulatory programs;

(c) Rectify deficiencies in the time periods allowed for completion of the consistency process; and

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[1] Copies of the WOGA statement filed in response to NOAA's request for comments on the federal consistency process, which preceded NOAA's publication of the draft Federal consistency study, are attached to this testimony and are incorporated by reference herein.

(d) Increase Federal oversight responsibilities and ensure that any additions or significant changes to state programs are processed as formal amendments to the states' approved CZMA programs.

Finally, WOGA opposes any legislative or regulatory measures which would seek to reverse or modify the United States Supreme Court's decision that OCS lease sales are excluded from the Section 307(c)(1) consistency provisions of the CZMA.

Thank you for your attention to these matters.

[The following information was subsequently received for the record:]

EXXON COMPANY, U.S.A.
Houston, TX, May 16, 1985.

Hon. SENATOR TED STEVENS,
U.S. Senate, Committee on Commerce, Science and Transportation, Washington, DC.

DEAR SENATOR STEVENS: On May 3, 1985, Ms. Donna R. Black and I appeared before the Committee on Commerce, Science and Transportation to present oral and written testimony and to answer questions regarding reauthorization of the Coastal Zone Management Act [CZMA]. Our testimony was submitted on behalf of the American Petroleum Institute, the Western Oil and Gas Association and the National Ocean Industries Association.

At the end of the question and answer period, you indicated that there were three additional questions which would be submitted to me in writing following the hearing. Attached is our response to those questions. In addition, we have included further supplemental testimony for the record which will expand upon certain key issues raised by our original testimony and which will further respond to the oral questions that were asked of Ms. Black and me at the hearing. We hope that the supplemental testimony is responsive to the additional issue and questions raised at the May 3 Senate Hearing. We, of course, will be happy to respond to any additional questions the Committee may have on this important subject.

The petroleum industry appreciates the opportunity we had to participate in these important Congressional deliberations. As we have demonstrated in our testimony, the industry's problems with CZMA are very real and burdensome and we urge Congress to take the action that we have recommended.

Sincerely,

HARRY J. LONGWELL.

Attachment.

SUPPLEMENTAL TESTIMONY OF HARRY J. LONGWELL ON BEHALF OF THE AMERICAN PETROLEUM INSTITUTE, WESTERN OIL AND GAS ASSOCIATION, AND NATIONAL OCEAN INDUSTRIES ASSOCIATION

I. RESPONSES TO THE WRITTEN QUESTIONS

Our first statements in this supplemental testimony relate to the written questions submitted by Senator Stevens following the hearing. These questions are as follows:

1. "What are the economic consequences of the California Coastal Commission failing to make its decisions in a timely manner? I am referring in particular to the burdens borne by the service and supply sector of the petroleum industry and their effects on employment within that portion of the industry."

2. "There is currently litigation between the California Coastal Commission and the California State Lands Commission and it is expected that the decision in the case may relate to transfers of proprietary interest of those owning property in the coastal zone. Is that a proper exercise of the Coastal Commission's jurisdiction?"

3. "In the name of environmental conservation the California Coastal Commission has proposed conditions which may restrict oil and gas production offshore. Are there any anti-trust implications related to these restrictive practices?

RESPONSES

Question 1. Time is one of the most critical elements in exploring for and developing oil and gas reserves on the OCS. Leases generally have five-year primary terms during which the OCS lessee must complete exploration and proceed with development plans. Secondly, drilling rigs are extremely expensive to keep idle and must be used when they can be made available. Finally, should hydrocarbons be discovered in commercial quantities, the overall development and production of the reserves must proceed on a predictable schedule because of the numerous projects (platform fabrication, pipeline installation, storage and marine terminal construction) that must be coordinated and tied together. The possibility of significant delay anywhere along the chain of events within the exploratory, development or production phases adds significant uncertainty and risk to the entire project. When actual delays are encountered, the project experiences increased costs. The combination of higher risk and cost has the obvious effect of discouraging OCS energy development at a time when such development should be encouraged.

Just the probability of delay, which in California is very high, has a chilling effect on OCS development. Of course, any reduction in exploratory and production activities on the OCS has a ripple effect on the service and supply sectors of the petroleum industry. As we have seen with the recent economic downturn in the industry, these adverse effects are amplified within the service and supply sectors because of their dependence on OCS development. Consequently, these sectors are heavily burdened when OCS development is slowed, regardless of whether the slow-down is caused by economic or regulatory factors. Furthermore, because these sectors are somewhat more labor intensive than the rest of the petroleum industry, there is also a disproportionate adverse effect on employment in that portion of the industry. In summary, there is a close causal connection between delay (both actual and probable) of OCS energy development and negative economic effects in the service and supply sectors of the petroleum industry.

Question No. 1 has also been the subject of the related debate on OCS leasing moratoria. Hearings across the country were held by the Energy, Environment and Safety Issues Affecting Small Business Subcommittee of the House Small Business Committee. The attached testimony by Carroll Hill, Vice President, Richill Marine Company of Ventura, California exemplifies the type of testimony presented at these hearings by the numerous service and supply companies adversely affected by the moratoria. Subsequent to the hearings, Mrs. Hill indicated that her testimony is equally applicable to CZMA-related delays in OCS development.

The second attachment, a recent article from the Oil Daily by Paul K. Driessen of the MMS, aptly describes the value of the U.S. offshore oil and gas business to the U.S. economy. The article, entitled "When It Comes to Offshore Leasing, Everybody Gets a Slice of the Pie," demonstrates the very strong ripple effect that offshore operations have on the entire economy.

Question 2. The issue in the referenced litigation (*Fisheries Protection Institute* v. *California Coastal Commission and California State Lands Commission*), is whether the State Lands Commission must obtain a coastal development permit from the California Coastal Commission to lease state lands for oil and gas exploration and development. The Coastal Commission is arguing that the leasing of state tidelands falls within the meaning of the term "development" as used in the California Coastal Act, and, accordingly, that a permit from the Coastal Commission is necessary. In so doing, the Coastal Commission is interpreting its jurisdiction over the coastal zone in the broadest possible light to attempt to control what is, in effect, only a transfer of a proprietary interest in property in the coastal zone.

The Coastal Commission has used its consistency authority under Section 307(c) of CZMA in a similar manner to attempt to control property transfers in the coastal zone. For example, the Coastal Commission has attempted to review for consistency the Interstate Commerce Commission's approval of the transfer of a segment of rail line in the coastal zone from one railroad company to another. The Coastal Commission asserted that this simple transfer of a proprietary interest in the rail line would affect land and water uses in the coastal zone even though the ICC approval covered only the sales transaction and not any subsequent activities. We believe that this is yet another example of how the Coastal Commission is acting beyond the scope of its consistency authority by ignoring the limitation that federal actions are reviewable only if they will affect land and water uses in the coastal zone.

Question 3. We are not aware of any antitrust improprieties related to the California Coastal Commission's activities. However, as we have noted in our testimony and in response to Question 1, the conditions the Commission has been imposing on projects have caused delays and increased the costs of OCS oil and gas production. The adverse economic consequences of such actions by the Commission could be similar to the economic consequences that would flow from artificial, antitrust-related constraints. Production of oil and gas is curtailed, imports increase, and tax and royalty revenues decrease; all to the ultimate detriment of consumers of petroleum products.

II. WHY THE CZMA CALIFORNIA PROBLEM IS A NATIONAL ISSUE

As our oral and written testimony demonstrated, industry has encountered serious problems with the manner in which CZMA has been implemented in certain states, particularly California. However, it must be emphasized that industry's concerns with the Act should not be characterized as only a "California" problem. The problems which we mentioned in our oral testimony and discussed at length in our written submittals raise a fundamental question regarding the proper role of the states in implementing CZMA through their coastal management programs. Congress, in enacting CZMA, decided to create a partnership between the states and federal government so that the states could actively participate in decisions which affect their coastal zones. Congress, however, never granted to the states a veto power over OCS development or a right to supercede federal jurisdiction over the OCS. Our object in seeing CZMA amended is to assure that the appropriate role of the states under CZMA is well-defined so that no state may decide on its own that its interests are paramount to those of the nation.

The petroleum industry cannot pick and choose where to find oil and gas reserves. The reason that CZMA problems have been encountered with a limited number of states is that major oil and gas reserves have been discovered in a limited number of areas on the OCS. To date major oil reserves have only been discovered in the OCS off Texas, Louisiana, Mississippi, and California. Of those states, only Louisiana, Mississippi, and California have approved coastal management programs which subject industry to consistency reviews. As we noted in our testimony, offshore California now holds 40 percent of the nation's proven offshore oil reserves and that percentage may well increase as additional California reserves are added while the Gulf of Mexico reserves continue to decline. Consequently, the delayed development of those California reserves as a result of CZMA consistency is not just a "California" problem. It is a national problem with significant fiscal, economic and national security consequences for the entire country.

As we have previously stated, we are also concerned about the precedent established by California's actions and the impact that precedent might have on other states where OCS oil and gas development may occur in the future. For example, a major gas discovery has recently been made in the OCS adjacent to Mobile Bay, Alabama. Industry is now just beginning to explore the vast OCS areas offshore Alaska and is hopeful that these efforts will yield major finds of oil and gas. There are also other OCS frontier areas off the Pacific and Atlantic coasts and in the eastern Gulf of Mexico which hold the potential for future major discoveries. It would be unfortunate if major discoveries, vital to the nation, were never made or never developed because the California Coastal Commission's example we adopted by those states adjacent to these emerging OCS frontier areas. We foresee such an outcome as a real possibility unless Congress places the appropriate constraints on state consistency review.

III. THE FACTS BEHIND THE FIGURES OF THE NOAA CONSISTENCY STUDY

Another area we would like to discuss further is the Federal Consistency Study released in draft from by NOAA's Office of Ocean and Coastal Resource Management. We feel strongly that this study should not be relied upon as evidence that the consistency process is working as it should. As NOAA acknowledges, the study is primarily statistical and did not involve weighting of the statistics for project size or importance. In fact, NOAA readily admits that information and data gaps exist, that there are descrepancies between State and federal agency data and that the statistical data does not provide a completely objective basis for evaluating the consistency process. (See Introduction to Vol. I) Futhermore, as one begins to look at the full report in detail (i.e., the case studies which underline the statistics) the problems with consistency, as we have enumerated, begin to emerge.

One illustration of the point we have made regarding the raw statistical numbers is the use of conditional or partial concurrences. A conditional or partial concurrence statistically shows up as an approval of a consistency certification. However, the conditions imposed to obtain consistency often involve very significant modifications of or restrictions on the applicant's proposed project. In the consistency study, NOAA addresses the issue of partial and conditional concurrences at length. (See pages III-245 to 266) NOAA recites the concerns raised not only by industry (Chevron, Exxon and Amoco) but also by the Corps of Engineers and Department of Interior. The study, for example, mentions the strong objection of the MMS to the California Coastal Commission's reliance on partial concurrences in which the state concurs on certain components of a project but withholds or defers concurrence on other components. The NOAA study states:

"The Minerals Management Service (MMS) strongly disagrees with and questions the practice of . . . . [partial concurrence] . . . . MMS argues that, under Section 307(c)(3)(B) of the CZMA and under MMS regulations, MMS and other Federal agencies are not allowed to issue any license or permit for an activity described in detail in an OCS plan until concurrence with all such activities is determined by the state . . . . MMS also contends that the use of partial concurrences is a piecemeal approach which results in numerous consistency certification submittals by applicants causing excessive time and paperwork input and delay in the conduct of exploration activities . . . . The MMS claims that the California Coastal Commission has used partial concurrences to delay, in certain cases for over a year, OCS exploration activities by limiting each OCS operator from submitting more than one well per month even when the plan involves several wells . . . ." (NOAA Draft Consistency Study at page III-263.)

The above quote from the NOAA study speaks for itself and emphasizes the need to look beneath the raw statistics in the study. This quote, however, also brings up the question of the use of the consistency process to delay exploration and production activities. In the summary of the report issued by NOAA, a comparison is made between the review of OCS plans by Louisiana and California, two states with "significant, but different experiences with OCS oil and gas development." (NOAA Summary, page 20. See also page II-54 of Study). The summary then notes that, on the average, the review period for plans of exploration (POE's) took 25 days in Louisiana and 31 days in California and for development and production plans [DPP's] took 45 days in Louisiana and 116 in California.

Although we cannot directly verify the data, we are convinced that the California review time cited in the summary is not correct and that California takes significantly longer than Louisiana to review POE's and DPP's for consistency. One need only to go back to the NOAA report itself to see that lengthy delays are routine when it comes to the California Coastal Commission's review of OCS oil and gas projects. For example, the statistical data base (Volume III of the Study) which shows the disposition of each POE and DPP reviewed by the California Coastal Commission, reveals that no review took less than one month and that the vast majority took the full three month review period. Nine projects, of which seven were POE's, took in excess of four months, with some going close to the maximum six month period. The median review period for the 21 POE's listed in the NOAA data base is 111 days—a far cry from the 25 day average of Louisiana.

The consistency review period, of course, does not take into account the amount of time necessary to appeal a denial of consistency to the Secretary of Commerce. As noted in the NOAA study, the average time the Secretary took to process an appeal is eight months. If an appeal is suspended for the purpose of conducting negotiations, mediation or holding additional hearings then the appeal process can extend well over a year. Thus, in dealing with the California Coastal Commission, an applicant for a POE is faced with an average of nearly a four month consistency review period, and if concurrence is not granted, an additional eight month appeal process.

The potential for a total of 12 months of delay in obtaining approval for a POE, while the primary lease term continues to run, places the lessee-applicant in a very difficult position. It is therefore of little wonder that many applicants in California are willing to abide by the conditional and partial concurrences imposed by the Coastal Commission. Their only alternative is a lengthy delay coupled with no certainty that they will prevail on appeal. We do not think this type of one-sided application of the consistency process was what Congress had in mind when it originally enacted CZMA.

Senator STEVENS. Our last witness is Sarah Chasis, senior staff attorney for the Natural Resources Defense Council.

STATEMENT OF SARAH CHASIS, SENIOR STAFF ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, AND CHAIRPERSON, COAST ALLIANCE, ACCOMPANIED BY ANDREW PALMER, ENVIRONMENTAL POLICY INSTITUTE

Ms. CHASIS. I am accompanied today by Andrew Palmer of the Environmental Policy Institute.

I would ask, Senator, that my written statement be submitted for the record, and I would like in my oral statement to highlight some of the points I have made in written testimony, and also to respond to some of the statements that the prior witnesses have made.

Senator STEVENS. You may proceed, please.

Ms. CHASIS. Mr. Chairman, I am a senior staff attorney with the Natural Resources Defense Council and chairperson of the Coast Alliance.

My testimony today is on behalf of the Coast Alliance, NRDC, the Environmental Policy Institute, Sierra Club, National Audubon Society, Friends of the Earth and the Garden Clubs of America.

These groups believe there are important national interests in the coasts that are best served by the maintenance of a strong National Coastal Zone Management Program.

For this reason, we strongly support reauthorization of the Coastal Zone Management Act.

There has been a long-recognized national interest in the protection of coastal resources. The CZMA was enacted in 1972, because Congress recognized the need for increased protection of the coast in the face of accelerating development. We know, Senator, that you played an important role in that original enactment.

In 1980, Congress once again reaffirmed the important national interest in coastal protection. That same national interest exists today. By the year 1990, it is anticipated that over 75 percent of the Nation's population will live within 50 miles of the coast. The well-being of an overwhelming majority of our population, thus, increasingly depends on a healthy coast.

The coast contains some of our continent's most ecologically productive and sensitive resources. These resources benefit not only the citizens of one locality or one State, but people everywhere. Coastal wetlands and estuaries provide important habitat for highly valued commercial and sports fisheries that migrate along the coast and into Federal waters on the Outer Continental Shelf.

Over two-thirds of the fish and shellfish harvested off the Atlantic and gulf coasts are estuarine dependent, as are half of those harvested off the Pacific coast. These fisheries are worth billions of dollars to our economy each year.

Barrier beaches and dunes buffer coastal storms and protect coastal areas from erosion and flood hazards. They also provide recreational pleasure to millions of Americans from around the country. On average, each American spends approximately 10 days a year in coastal recreation.

With the increasing population concentration on the coast, the threat of losing even more valuable coastal areas has escalated. In addition, Federal initiatives to develop the exclusive economic zone for oil and gas, other minerals, fisheries, and waste disposal, are placing increasing pressures on the coasts.

As you know, this administration is deeply committed to rapid exploitation of the OCS. Secretary Hodel has just announced a new draft proposed 5-year leasing program that schedules 43 sales around the entire United States. This leasing requires effective coastal planning and mitigation to insure that offshore activities do not disrupt coastal economies and resources.

The long-recognized national interest in coastal resources combined with the intense pressures these resources now face point to the continued need for maintenance of a national program. Unless Congress reauthorizes the sections of the act that expire this year, we will be left without a National Coastal Zone Management Program. In our view, the demise of this program would be a major loss to the Nation.

Many State programs would collapse. For those that would continue, there would be little incentive to implement their programs as approved by OCRM, and there would be no incentive to make significant improvements in meeting the national interest objectives which have been set out in the act.

The Federal oversight and direction necessary to insure consideration of the national interests in the coasts would disappear. The investment made by the Federal Government over the last decade in the creation of a national program would be lost.

For all of these reasons we strongly support reauthorization of those sections which expire, in particular sections 306, 306(A), 309 and 315.

We also support Senator Packwood's bill which would restore the Federal consistency requirement for offshore oil and gas leasing and reverse last year's Supreme Court decision in *Secretary of the Interior* v. *California*.

We would very much like to see this bill reported out of committee as it was last year. If the committee, however, chooses not to address this issue as part of the reauthorization, we would ask that the committee, at a minimum, keep a careful eye on the administration's implementation of the Supreme Court decision in *Secretary of the Interior* v. *California* to insure that it adheres to a narrow interpretation of that decision.

Finally, we oppose any effort to weaken any aspect of section 307, the consistency provision, or other provisions of the act. In that regard, Mr. Chairman, I would like to respond to a few of the comments that the previous witnesses made.

I think that the record on the employment of Federal consistency by the States under section 307(c)(3) does not support legislative changes at this time. I would like to cite to you the NOAA study which has come out in draft form.

With respect to the State approval of exploration plans and development and production plans, in particular, the study points out that States concurred with about 99 percent of the nearly 435 plans for OCS exploration, development and production reviewed under section 307(c)(3)(B). It goes on to say that in those cases in which a State objected, the case specific information indicates that these objections were often resolved by further negotiations to develop conditions or mitigating measures.

That report goes on to analyze, at least with respect to two States, the time that was taken to review these plans, and it found that in Louisiana and California, there was relatively less time required for plan of exploration review than for plan of development and production review. For Louisiana it was 25 days typically, and in California, 31 days.

For development and production plans, which are obviously a lot more complex, the average review period was 46 days in Louisiana and 116 days in California. I would point out that the act gives the States 6 months, to review development and production plans, and that, on average, California has taken less than the statutory time.

Senator STEVENS. Why should it ever take more than the statutory time?

Ms. CHASIS. I am just saying that the State of California has made a real effort to live within the limits and even do better than what the statute provides.

The report I think very significantly states that the Federal consistency study does not identify specific needs that will require legislative change at this time.

There are a couple of other points.

I think that a lot of the comments, almost all of them that the industry has raised, revolve around California. I question whether problems that the industry may have with one State should merit legislative change of a national statute.

Second, I think there obviously needs to be an opportunity for California to respond to these allegations.

Finally, I think it is important to point out that there is a secretarial review process under section 307(c)(3) which I believe has been working fairly to address industry's concerns. In three recent decisions which the Secretary of Commerce has rendered, he ruled for the industry in the Union Oil case; in the second, he upheld the California Coastal Commission; in the third, he withheld decision until further action by the State and county. In that third case, partly I think as a result of the Secretary's review, an agreement has been reached by Exxon in the Santa Inez case with the State and the county.

Just to reiterate, I do not think that the record at this time lends support to legislative change to section 307(c)(3).

Senator STEVENS. I could not agree with you more that the problems of the State of California should not warrant legislation which will have a serious impact in my State, for instance. But, beyond that, I do not quite understand your position because you indicated that you did support the change that was suggested by Senator Packwood. And yet you now say that you do not believe there should be change because of the problems of California. As I understood it, the suggestion to extend consistency to the leasing phase was the objective of Senator Packwood's amendment.

Ms. CHASIS. We think the consistency provisions have worked well and that the NOAA study supports that. The NOAA study looks at the experience with application of consistency at the lease sale stage as well as at the later stages and again finds that there were not major problems at the time when Interior was doing consistency reviews for lease sales.

There is, we believe, an important role for the States at the lease sale stage a well as subsequently.

In fact, we do not see why it is not in the industry's interest as well as the States' and the environmental interests to have that consistency review at that point, before the major investment of funds has been made by the industry.

Senator STEVENS. Well, when that imposes the local government's right to change its existing laws as part of the coastal zone plan, we then get into the area of economic blackmail. The county, off which the leasing is to take place, seeking to have the economic activity take place in its county, passes laws which cannot be complied with without its consent, in order to try to get the industry to move from port A to port B in that county. Or, in my State we have people who want to have a part of the economic impact, they want to have some portion of the labor involved in offshore activity, or they want to have a buildup of their airport or some industrial park associated with the activity. And so they oppose the OCS activities, the leasing period, through the consistency provisions in order to obtain the economic impact.

It is not a question of resource base conflict. It is a question of economic impact at the leasing stage.

That is why I have opposed it and I continue to oppose it. I agree with the statement you made. I just do not see any reason to change a national law because of difficulties that are being incurred in one State which is hyperactive in terms of yielding its jurisdiction as far as coastal zone management to counties.

That is the vision that I have of California at the present time.

Ms. CHASIS. There is one point I would like to make in response. No county or locality can utilize or change or adopt a law if it makes a significant change in the State's policies without going through Federal review and approval. In other words, for Federal consistency to apply, the State's program has to have been reviewed and approved by the Federal Government and be found to be meeting Federal requirements on a continuing basis. Any change in the State's program, any significant change in the State's program, whether it is through adoption of a local plan or a change in the State's own laws, has to then go back for Federal review and approval.

So there is a safeguard mechanism, through NOAA oversight, which is provided.

Senator STEVENS. Well, we could have exchanges on this for some time, I think. But it seems to me that the provisions of the law—and I did have a little bit to do with them—really intended that the Federal powers that we thought we were using to extend significant Federal acts—Clean Air, Clean Water and others—to the OCS were such that it would be inconsistent to have a State, through a coastal zone management plan which adopts a county plan, in effect provide for a moratorium on leasing in any particular area. That is the way I understand it could be applied, through extending consistency to the leasing stage.

I am looking forward to reading that report. I have not read the report. You are ahead of me in that regard. But we have redundancy in some of these reviews. It does seem to me in the best interest of all concerned that we try to eliminate redundancy and put the basic requirements into the federal system so that everybody, all over the country, knows what the rules of the game are, and allow the States, through the consistency process, to deal with only specific resource impacts as far as the OCS is concerned, not visual pollution concepts that come from a large population base.

By definition, in my opinion, I think beyond the 3 mile-limit ought to be beyond the impact of visual pollution.

Ms. CHASIS. It seems to me that the concerns motivating States such as Massachusetts, California, and Alaska that have used consistency, both at the lease sale stage and later, are usually motivated by very strong concerns of impacts on commercial fisheries, on coastal economies. These are not frivolous concerns.

Senator STEVENS. I am not saying they are. As a matter of fact, I think they are very serious. Where there is a resource base conflict, the States ought to be involved. But I don't believe they ought to be involved for the purpose of economic blackmail, nor for the purpose of extending to the OCS concerns that might be very valid and that are very valid in a heavily populated beach area. I do not see any beaches on the OCS.

Maybe you do not hear me. But I do not hear you as being as far apart from us and what we are trying to do with the bill and the way I believe my State wants this bill to evolve.

As far as I am concerned, I think we are still very strong supporters of the coastal zone management concept and, properly applied, it is going to provide a substantial protection for our ocean resource base.

I thank you for your support of that and hope we can work together.

Ms. CHASIS. Thank you very much, Senator.

[The statement follows:]

STATEMENT OF THE COAST ALLIANCE, NATURAL RESOURCES DEFENSE COUNCIL ENVIRONMENTAL POLICY INSTITUTE, SIERRA CLUB, NATIONAL AUDUBON SOCIETY, FRIENDS OF THE EARTH AND THE GARDEN CLUBS OF AMERICA

My name is Sarah Chasis and I am a Senior Staff Attorney with the Natural Resources Defense Council [NRDC] and Chairperson of the Coast Alliance, an organization founded in 1979 for the specific purpose of promoting coastal protection. Accompanying me is Andrew Palmer of the Environmental Policy Institute. My testimony today is on behalf of the Coast Alliance, NRDC, the Environmental Policy Institute, Sierra Club, National Audubon Society, Friends of the Earth, and the Garden Clubs of America.

These groups believe that protection of our nation's coastal resources is a top environmental priority. They support reauthorization of the federal Coastal Zone Management Act [CZMA] because it constitutes the only comprehensive federal program to recognize the coast as an integrated ecosystem and to establish a mechanism for its overall management and protection.

As NRDC's specialist on coastal and ocean issues, I have been following implementation of the CZMA for almost a decade and have been involved with the development and implementation of over a dozen state coastal management programs. It is my firm belief, shared by others in the environmental community, that there are important national interests in the protection of the coast that are best served by the maintenance of a strong national Coastal Zone Management Program. For this reason, we support reauthorization of the CZMA.

I. NATIONAL INTERESTS SERVED BY THE FEDERAL COASTAL ZONE MANAGEMENT PROGRAM

There is a long recognized national interest in the protection of coastal resources. The CZMA was enacted in 1972 principally because Congress recognized the need for increased protection of the coast in the face of accelerating development. The Act emphasizes repeatedly the "important ecological, cultural, historic and aesthetic values of the coastal zone" (Section 302(e)) and states that population growth and economic development "have resulted in the loss of living marine resources, wildlife, nutrient rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use and shoreline erosion." Section 302(c).

The legislative history of the original Act indicates Congressional concern about the following: the widespread evidence of destruction of the nation's salt marshes; the fact that the commercial fishing in the United States is dependent on coastal and estuarine waters and marshlands; that increased recreational and commercial demands in the coastal zone endanger biological organisms and that fragmentation of state and local government authority has exacerbated pressure for economic development. *See e.g.*, S. Rep. No. 92-753, 92nd Cong., 2d Sess., p.5 (1972).

In 1980, Congress once again recognized the important national interests in coastal protection. Congress amended the CZMA to explicitly specify certain national policy objectives for coastal management, including the protection of wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, sish and wildlife and their habitat wtihin the coastal zone. Section 303(2)(A). The 1980 amendments require that states spend an increasing proportion of each Section 306 grant on making significant improvements in meeting these national policy objectives. Section 306(a)(3). Finally, Congress also added a new subsection to the law, Section 306(i), which encourages states to investory, designate, and protect coastal resources of national significance.

The same national interest in coastal protection which prompted Congress to originally enact the Coastal Zone Management Act in 1972 and to strengthen the Act in 1980 exists today. Indeed, the need for coastal protection is greater than ever.

By the year 1990 it is estimated that over 75 percent of the nation's population will live within 50 miles of the coast. The well-being of an overwhelming majority of our population thus increasingly depends on a healthy coast.

The coast contains some of our continent's most ecologically productive and sensitive resources, including wetlands, estuaries, barrier islands and beaches. These resources benefit not only the citizens of one locality or one state but people everywhere. Coastal wetlands and estuaries, for example, provide important habitat for highly valued commercial and sport fisheries that migrate along the coast and into federal waters on the Outer Continental Shelf [OCS]. Our two-thirds of the fish and shellfish harvested off the Atlantic and Gulf coasts are estuarine dependent, as are half of those harvested off the Pacific Coast. These fisheries are worth billions of dollars to our economy each year.

Barrier beaches and dunes buffer coastal storms and protect other coastal areas from erosion and flood hazards. They also provide recreational pleasure to millions of people from around the country. On average, each American spends approximately 10 days a year in coastal recreation. The extremely important functions the coast performs know no political boundaries, their benefits accure broadly to all Americans.

Coastal resources require a vigilant system of management and protection. Already too many of these resources have been irretrievably damaged or lost. For example, according to the U.S. Fish and Wildlife's National Wetlands Trends Analysis, 400,000 acres of coastal wetlands and mangroves were destroyed in the twenty year period from the mid-1950's to the mid-70's. [1] Those losses directly attributable to human activity have been due principally to urbanization—mainly dredging and filling for development. [2] With the increasing population pressures on the coast, the threat of losing even more valuable coastal areas escalates.

Federal initiatives to develop the Exculsive Economic Zone (EEZ) for oil and gas, other minerals, fisheries and waste disposal also are placing pressures on the coast. This Administration is deeply committed to rapid exploitation of the resources of the U.S. OCS. For example, Secretary of the Interior Hodel has announced a new Draft Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for the years 1986–1991. It schedules 43 sales around the entire U.S. OCS (4 sales off the Atlantic coast, 12 in the Gulf of Mexico, 6 off the West Coast, 16 in Alaska, plus 5 supplemental sales the location of which will be determined at a later date). It continues the policy of offering vast areas of the coastline for lease at one time. Moreover, it opens up a whole new area along the Oregon and Washington coast for lease. It also provides a new mechanism for accelerating sales off California, Alaska and the Eastern Gulf of Mexico, at the Secretary's discretion, if eaconomic conditions or geologic information should change. This continued rapid pace of leasing requires effective coastal planning and mitigation to ensure that offshore activities do not disrupt coastal economies and resources.

The Administration also appears committed to opening up the EEZ to ocean incineration of hazardous waste. EPA has recently proposed regulations which would permit such controversial operations. The transport of such materials and their incineration at sea may have serious impacts on coastal areas.

In conclusion, the long recongnized national interest in coastal resources, combined with the intense manmade pressures these resources now face, point to the continued need for maintenance of a national Coastal Zone Management Program.

II. EFFICACY OF THE FEDERAL COASTAL ZONE MANAGEMENT PROGRAM

Under the CZMA, states have made important strides in developing comprehensive management systems for their coasts. Ongoing federal support, as well as improved oversight, is needed in order to assure continuation and improvement of these programs.

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[1] Dept. of the Interior, U.S. Fish and Wildlife Service, *America's Endangered Wetlands* (1984).

[2] *Id.*

A. ACHIEVEMENTS OF STATE PROGRAMS AND CONTINUING NEEDS

Of the thrity-five coastal states and territories, twenty-eight now have federally approved coastal zone management programs. A twenty-ninth state, Virginia, is in the process of obtaining federal approval for its program.

In order to obtain federal approval initially and retain it thereafter for purposes of receiving federal money and consistency authority, states must have in place protections for significant coastal resources such as wetlands, beaches, dunes, and barrier islands. 15 CFR §923.3(b)(1). Because of this requirement several states had to either enact legislation or promulgate regulations to obtain federal approval of their programs. Thus for example.

New York State enacted a Coastal Erosion Hazard Act giving the State the authority to regulate hazardous development on beachs, dunes and barrier islands.

Massachusetts adopted coastal wetlands regulations detailing the standards for their protection;

South Carolina, Louisiana and Alaska enacted new laws giving the state the authority to plan for and manage coastal development.

After approval of a state's program, a state must demonstrate that it is making a significant improvements in protecting natural resources and meeting other national objectives of the Act, otherwise a portion of its federal funds will be lost. Section 312(c). This serves as an important incentive to states to strengthen their resources protection effors. For example, to meet this requirement, many states have undertaken activities to step up enforcement of their environmental laws.

However, a great deal still remains to be done. In many states, laws are stiil not fully implemented. For example, under New York State's coastal program, two critical environmental programs have not been fully implemented: the designation of significant fish and wildlife habitat areas and the identification of coastal erosion hazard areas.

Maryland only last year enacted a critical areas law to regulate activities adjoining the Chesapeake Bay. This important law is at the very early stages of implementation. Florida has a new wetlands law which is just beginning to be enforced.

In still other states, such as Alaska and California, which rely on local governments to adopt their own coastal plans, development of these local plans is still underway. Continued federal funding and oversight is needed to assure completion of these important tasks.

B. PROBLEMS WITH FEDERAL IMPLEMENTATION

There has been real concern about the commitment of this Administration to the CZM Program. Its efforts to eliminate the budget for state programs and the overriding focus in the Section 312 evaluation process on streamlining the permitting process rather than promoting resource conservation and protection has weakened the program and reduced its efficacy as a tool for resource protection.[3]

In 1983, the Inspector General [IG] of the U.S. Department of Commerce, in a report entitled "Opportunities to Improve Federal Oversight Responsibilities of States' Coastal Zone Management Programs to Assure More Effective Results" (August 1983), concluded that:

The Office of Ocean and Coastal Resource Management [OCRM] needs to establish a more balanced and comprehensive monitoring of state coastal management programs;

OCRM should do more to fund significant improvements of state programs and should move to implement Section 306(i) which encourages states to inventory and protect coastal resources of national significance;

OCRM's evaluation of state programs should be tailored to focus on problem states and to provide more detailed analysis of alleged accomplishments in state programs.

Many of the Inspector General's criticisms still are valid.

For example, Section 306(a)(3) requires that the state devote an increasing portion of its 306 grant to making significant improvements in meeting the Section 303(2)(A) through (I) national interest objectives; otherwise, under Section 312(c), a state loses a portion of its federal funding. The IG Report criticized OCRM's interpretation of this provision to allow states to spend this money on routine implementation of the existing program rather than on new or expanded program activities. OCRM continues to allow states to meet the significant improvements requirement by carrying out routine implementation tasks rather than undertaking new or expanded initiatives. In light of the reduced Section 306 funding levels and funding uncertainty, this flexibility may be necessary. However, if the Administration did not make funding of state programs such an uncertain proposition each year, the significant improvements requirement could be used more effectively to advance national interest objectives in coastal resource protection.

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[3] In its Biennial Report to Congress for fiscal year 1982 and 1983, OCRM reported that it is focusing on three areas—permit simplification, coastal hazards and special area management. U.S. Dept of Commerce, *Biennial Report to Congress on Coastal Zone Management* at 34 (September 1984). Coastal resource protection was *not* listed as a priority.

The Section 312 evaluations are still not always timed to coincide with an upcoming grant award as they should be. For example, in fiscal year 1985, Section 312 evaluations for Massachusetts and Wisconsin were scheduled for April and September, respectively, even though the next round of grant awards to these states was to be made prior to that time. This means that the evaluators' findings would not be available in setting the conditions for the next grant award.

Even when properly timed, the Section 312 often are not used to set the next year's grant conditions. Environmental representatives in several states expressed concern about this point and voiced doubt about the seriousness with which OCRM follows through on its evaluations.

The IG Report also criticized OCRM's implementation of Section 306(i). This section which encourages states to inventory, designate and protect coastal resources of national significance was one the environmental community worked hard to have included in the 1980 Amendments to the CZMA. Nothing was done to implement this section for several years. No regulations have ever issued detailing what states were expected to do.

We were surprised recently to learn that OCRM had prepared a report assessing states' progress under Section 306(i). OCRM's plan was to issue the report without any public review or comment. When objections were raised to this procedure, OCRM agreed to provide the public with an opportunity for comment. However, all that was provided was a 30 day public comment period on a 275 page report.

The 306(i) report is seriously deficient. For example, despite clear legislative history stating that OCRM must provide criteria to states to assist them in determining what areas represented coastal resources of national significance, OCRM never established such criteria. Moreover, OCRM's definition of what constitutes satisfactory progress was also at odds with the legislative history of section 306(i). OCRM states that as long as the state has made some effort to inventory, designate and manage one or more of the coastal resources of national significance, the requirement is met. However, the House Report accompanying the 1980 amendments defines satisfactory progress as "reasonable compliance with all the activities described in section 306(i) and reasonable justification for any shortcomings." H.R. Rep. No. 96-1012, 96th Cong., 2d Sess., p. 44 (1980). These and other deficiencies of the report reflect a disturbing lack of commitment by OCRM to promoting protection of coastal resources of national significance under the CZMA.

In conclusion, if Congress reauthorizes the CZMA, as we hope it does, we believe OCRM has an obligation to implement the law more vigorously and effectively than it has over the past several years.

III. NEED FOR REAUTHORIZATION OF THE CZMA

Authorization of key sections of the CZMA expires this year. The key sections include: Section 306 (funding to states for implementation of their federally approved coastal management programs); Section 306A (funding for public access, waterfront revitalization and preservation of special areas); and Section 315 (estuarine sanctuaries and island preservation).

Unless Congress reauthorizes these sections, there will be: no federal funding available for the 28 federally approved coastal state and territory programs, no federal funding for special projects to enhance public access, revitalize waterfronts or preserve special areas; and no federal funds for estuarine sanctuaries. The bottom line is that we would be left without a national Coastal Zone Management Program.

The demise of the CZMP would be a major loss to the nation. Many state programs would collapse. For those that would continue, there would be little incentive to implement their programs as approved by OCRM and there would be no incentive to make significant improvements in meeting the national interest objectives set out in the Act. The federal oversight and direction necessary to ensure consideration of the national interests in the coast would disappear. The investment made by the federal government over the last decade in the creation of a national CZMP would be lost.

For all these reasons, we strongly support reauthorization of those sections of the Coastal Zone Management Act for which authorization expires in 1985, including Section 306, 306A, 309 (interstate grants) and 315. We would like to see reauthorization of the first 3 sections for eight years at current authorization levels ($48 million, $20 million and $3 million respectively). We support reauthorization of Section 315 for eight years at a $15 million level, rather than the current $9 million authorization level which we believe is too small for the national estuarine program. We also support strengthening of Section 315 to reflect the national interest in research in these areas and to require development of a research plan for designated sanctuaries. Finally, we support reauthorization of program administration at the current level ($6 million).

We support linking continued state funding under Section 306 to the Section 306(i) requirement that states make significant progress toward designating and protecting coastal areas of national significance.

We also support an amendment to Section 307(c)(1) which would restore the federal consistency requirement at the OCS lease sale stage and clarify the applicability of this provision to federal activities outside, as well as within, a state's coastal zone.

Finally, we oppose any effort to weaken any aspect of Section 307, the consistency provision, or any other provision of the Act.

In light of the tremendous pressures to which our coastal areas are increasingly subject and the continuing ecological and economic importance of these areas, we are concerned by S. 959's provisions which propose to reduce current authorization levels. We favor instead retaining current authorization levels.

We support Senator Packwood's bill which would restore the federal consistency requirement for offshore oil and gas lease sales and reverse last year's Supreme Court decision in *Secretary of the Interior* v. *California.* We would very much like to see this bill reported out of Committee as it was last year. If the Committee chooses not to address this issue as part of the reauthorization of the CZMA , we would ask that the Committee at a minimum keep a careful eye on the Administration's implementation of the Supreme Court decision in *Secretary of the Interior* v. *California* to ensure that it adheres to a narrow interpretation of that decision.

Thank you Mr. Chairman for this opportunity to testify. I will be happy to answer any questions you may have.

SUMMARY OF ENVIRONMENTAL GROUPS' TESTIMONY ON CZMA REAUTHORIZATION

The Coast Alliance, Natural Resources Defense Council, Environmental Policy Institute, Sierra Club, National Audubon Society, Friends of the Earth, and the Garden Clubs of America strongly support reauthorization of the federal Coastal Zone Management Act [CZMA].

The CZMA was enacted in 1972 principally because Congress recognized the need for increased protection of the coast in the face of accelerating development. In 1980, Congress once again recognized the important national interest in coastal protection.

The same national interest in coastal protection which prompted Congress to originally enact the CZMA and to strengthen it in 1980 exists today. Indeed, the need for coastal protection is greater than ever.

By the year 1990 it is estimated that over 75 percent of the nation's population will live within 50 miles of the coast. The well-being of an overwhelming majority of our population thus increasingly depends on a healthy coast. With the increasing population pressures, the threat of losing valuable coastal areas escalates. In addition, federal initiatives to develop the Exclusive Economic Zone [EEZ] for oil and gas, other minerals, fisheries and waste disposal are placing increasing pressure on the coast.

The long recognized national interest in coastal resource protection, combined with the intense manmade pressures these resources now face, point to the continued need for maintenance or a national Coastal Zone Management Program.

Under the CZMA, states have made important strides in developing comprehensive management systems for their coasts. However, a great deal still remains to be done. In many states, laws are still not fully implemented. In still other states which rely on local governments to adopt their own coastal plans, development of these local plans is still underway. Continued federal funding and oversight are needed to assure completion of these important tasks.

Unless Congress reauthorizes the sections of the CZMA that expire this year, we will be left without a national Coastal Zone Managment Program. The demise of the CZMP would be a major loss. Many state programs would collapse. For those that would continue, there would be little incentive to make significant improvements in meeting the national interest objectives set out in the Act. The federal oversight and direction necessary to ensure consideration of the national interests in the coast would disappear. The investment made by the federal government over the last decade in the creation of a national CZMP would be lost.

For all these reasons, we strongly support reauthorization of those sections of the Coastal Zone Management Act for which authorization expires in 1985, including Sections 306, 306A, 309 (interstate grants) and 315. We also support Senator Packwood's bill which would restore the federal consistency requirement at the OCS lease sale stage and clarify the applicability of Section 307(c)(1) to federal activities outside, as well as within, a state's coastal zone. Finally, we oppose any effort to weaken any aspect of Section 307, the consistency provision, or any other provision of the Act.

Senator STEVENS. We have statements that have been received for the record from the Governor of Alaska, Bill Sheffield, from John Palatiello on behalf of the American Congress on Surveying and Mapping and the American Society of Photogrammetry and Remote Sensing.

We will include those statements in the record.

For those who wish to submit additional materials, we will receive them until May 17. Any additional materials will be reviewed by the staff and the chairman for the purpose of determining whether they should be included in the record.

Thank you all very much.

[Whereupon, at 12 noon, the committee adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of Hon. Bill Sheffield, Governor, State of Alaska

Mr. Chairman and members of the committee, on May 3, 1985, the Senate Commerce, Science, and Transportation Committee and the National Ocean Policy Study will jointly conduct a hearing on S. 958, a bill reauthorizing the Coastal Zone Management Act [CZMA]. the coastal zone management program is extremely important to the State, and we strongly support its reauthorization.

The coastal management program provides the most effective means for sound management of important coastal resources, both at the national and state levels. The program establishes an organized forum in which state interests in development of coastal resources may be addressed.

Alaska is particularly concerned about coastal resources. The State has the longest coastline of any state and one-third of the coastline of the nation. Furthermore, ninety percent of the people in Alaska live in the coastal zone. Coastal resources of major importance to Alaskan people and their economy include fisheries, recreation, timber, energy resources, and a tourist industry supported by the abundance and aesthetic values of all these resources.

The State is experiencing increasing development. Leasing for oil and gas development on the Federal Outer Continential Shelf [OCS] is proceeding over much larger areas than in the past. Such leasing, and all other coastal development, should be conducted properly. The coastal management program provides the most important way of insuring that this occurs.

In consideration of the foregoing, the State is in agreement with the approach taken by S. 958. The bill provides a commitment of federal financial assistance for state coastal programs for the next five years. The bill recognizes that the coastal management program is a cooperative federal and state effort. For Alaska's part, we have provided an ever-increasing share of the cost of the program. State support has increased four hundred percent to make up for declining federal support. The State believes that continued federal support for a fair share of the costs of the program represents an equitable and firm commitment to a continued state and federal partnership for sound management of our coastal resources.

In addition to reauthorization of the CZMA, the State believes that the committee should respond to the U.S. Supreme Court decision which removed the ability of the states to review oil and gas lease sales on the OCS for consistency with state coastal plans. We believe that leasing on the OCS sets in motion a chain of events that almost invariably affects coastal resources. The lease sale stage offers the only opportunity to review the specific areas that are to be offered for lease. The State believes that the location of lease sales, as well as the stipulations placed on leases, have a significant bearing on activities that follow during exploration and development. Consequently, we do not think that the review of post-lease activities under section 307(c)(3) of the CZMA is adequate to address all State concerns. Moreover, we do not feel that the comment opportunity provided under section 19 of the OCS Lands Act provides any definite assurance that the interests of the states will be protected.

Before the Supreme Court decision, the State reviewed three Federal OCS lease sales for consistency. As a result of dialogue and discussion between the Department of the Interior and the State, all three lease sales proceeded on schedule without State opposition. The balance struck accommodated the national interest in a strong energy development program while also recognizing and protecting legitimate interests of the State.

In the event that the committee demurs from addressing the OCS lease sale issue, the State believes that the approach taken by the National Oceanic and Atmospheric Administration [NOAA] to interpret the court's decision narrowly should be incorporated into the bill. There are several federal agencies which are attempting to expand the lease sale exemption to other federal actions currently subject to coastal consistency reviews under section 307(c)(1). We are concerned that without legislative action, there will be an erosion of the ability of states to review federal activities for consistency. This diminution of state authorities will inevitably lead to more, rather than less, conflict resulting from these federal activities. It should be remembered that coastal consistency provides the forum to resolve conflicts at an early stage rather than allowing them to fester and be disruptive once substantial commitments of resources have been made.

The only other amendment sought by the State concerns section 306(g) of the CZMA. That provision provides that during periods when a state program is subject to an amendment under review by the Department of Commerce, the state is not entitled to receive a section 306 grant from the federal government. Up until now, this provision has not caused serious problems because all additions of the State's program have been adopted by NOAA through the routine program implementation process.

However, with the recent decision to review the Bristol Bay plan as an amendment, and the forthcoming review of the North Slope Borough plan, the State's program could be the subject of pending amendments for an extended period of time. Assuming that this period will extend past the date when the State would normally receive its section 306 grant, section 306(g) could result in the substantial disruption of the State's total CZM program. Consequently, we suggest that section 306(g) be amended to allow NOAA to give section 306 grants to states even when their programs are the subject of amendments.

Thank you for the opportunity to submit these comments, and I look forward to continuing to work with you on the reauthorization of the Coastal Zone Management Act. I respectfully request that this testimony be placed in the hearing record.

GALLOWAY & GREENBERG,
ATTORNEYS AT LAW,
Washington, DC, May 2, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Senate Committee on Commerce, Science and Transportation, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN DANFORTH: I am writing on behalf of Southeastern Fisheries Association, Inc. [SFA] [1] concerning S. 959 (the "bill"), a bill under consideration by the Committee to reauthorize the Coastal Zone Management Act of 1972 [the "CZMA"].

SFA has no opposition to the bill as currently drafted. However, should the Committee consider modification of particular, controversial provisions of the CZMA, especially the "federal consistency" provision found in Section 307(c)(1), then SFA believes it imperative that the Committee examine the implications of the application of Section 307(c)(1) to fisheries management activities under the Magnuson Fishery Conservation and Management Act [the MFCMA].

SFA strongly believes that application of Section 307(c)(1) to fisheries management activities is neither necessary nor desirable. Indeed, such application fundamentally undercuts the unique regional nature of the decisionmaking and management regime under the MFCMA. In our judgment, the Committee was precisely correct last year when, in reporting out consistency legislation, it excluded fisheries from the scope of Section 307(c)(1) and unequivocally concluded that "application of the federal consistency requirements to the fishery management process is unnecessary and potentially disruptive." S. Rep. No. 98-512, 98th Cong., 2d Sess. 13 (1984).

In sum, should the Committee decide to consider any amendments "clarifying" or "modifying" Section 307(c)(1), SFA respectfully urges it to reject any application of Section 307(c)(1) to the fisheries management process under the MFCMA. At the least, the Committee should take no action on the consistency provision until it has a full opportunity to hear from the fishing industry and develop a complete record concerning the consistency issue as it affects the Nation's fisheries.

Thank you for your consideration of our views.

Sincerely,

ELDON V.C. GREENBERG.

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[1] SFA, which is headquartered in Tallahassee, Florida, is the largest commercial fisheries trade association in the Southeastern United States. It has more than 400 members from all sectors of the commercial fishing industry from North Carolina to Texas.

American Congress on Surveying and Mapping,
Falls Church, VA, May 2, 1985.

Hon. John Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman, The American Congress on Surveying and Mapping and the American Society for Photogrammetry and Remote Sensing are allied national professional and technical societies with more than 18,000 members in surveying and mapping science. Our members are in private practice, academic instruction and government service at the Federal, state and local levels in the disciplines of surveying, cartography, geodesy, photogrammetry and remote sensing.

We wish to include this statement in your May 3 hearing record on the above referenced legislation.

A MULTIPURPOSE CADASTRE—BACKGROUND

The need for a uniform land information system has been discussed by professional and scientific organizations for decades. Momentum for such an endeavor was heightened in 1980 when a report on the "Need for a Multipurpose Cadastre" was published by the National Research Council (NRC) of the National Academy of Sciences.

The NRC identified five basic components of a cadastre: a reference frame consisting of a geodetic network; a series of current, accurate large-scale maps; a cadastral overlay delineating boundary parcels; a unique identifying number assigned to each parcel as a common index to all records in the information system; and a series of land data files, each including a parcel identifier for purposes of information retrieval and linking information in other data files.

Of these components, three are currently part of the mission of existing Federal agencies. The National Geodetic Survey (NOAA, Department of Commerce) has responsibility for the national geodetic network, the National Mapping Division (USGS, Department of the Interior) provides topographic maps, and the Division of Cadastral Survey (BLM, Department of the Interior) provides cadastral surveys of Federal lands.

Only the coordination of parcel identifiers, its index and the files are partially lacking. Each agency has computer capabilities to call up their respective data based on identification numbers.

The two missing ingredients are (1) coordination of the activities of the several agencies, and (2) integration and leadership for local government.

The achieve these components, the NRC recommended: (1) that a lead agency for the multipurpose cadastre be designated; and (2) consistent land information and display standards be developed for use among and within Federal agencies and between federal and state governments . . . to ensure compatibility on a national basis, delegating these functions to local governments where appropriate.

ESTIMATED COST SAVINGS

In its report, the NRC found that resolution of duplication, accessibility and other problems in current land data records would reduce recording office costs, which amounted to $137 million in 1971 and land transfer costs which amounted to $17 billion in 1974. According to a research paper presented at the March, 1984 American Congress on Surveying and Mapping/American Society for Photogrammetry and Remote Sensing convention, in Southern California alone some $1.125 billion will be saved through map data users' and generators' coordination of hardware and software compatibility and elimination of duplicative surveying and mapping efforts.

In order to assure these savings at the Federal, state and local level, it is suggested that Congress provide the authority to a Federal agency to lead in the coordination of a multipurpose cadastre. It is suggested that the National Geodetic Survey, Office of Charting and Geodetic Services (C&GS), NOAA, be the lead agency.

OFFICE OF CHARTING AND GEODETIC SERVICES HAS STATUTORY AUTHORITY TO DEVELOP A MULTIPURPOSE CHADASTRE

The Director of C&GS (formerly the Coast and Geodetic Survey) has the statutory responsibility to "provide charts and related information . . . provide basic data for engineering and scientific purposes and for other commercial and industrial needs . . . conduct . . . hydrographic and topographic surveys (and) geodetic control survey . . ." (33 U.S.C. 883(a)).

"In order that full public benefit may be derived from . . . the dissemination of data resulting from the activities herein authorized and of related data from other sources, the Director is authorized to conduct the following activities . . . processing and publication of data, information, compilations, and reports." (30 U.S.C. 883(b)).

"To improve the efficiency . . . and to increase engineering and scientific knowledge, the Director is authorized to conduct developmental work for improvement of surveying and cartographic methods . . ." (33 U.S.C. 883(d)).

"The Director is authorized to enter into cooperative agreements with, and to receive and expend funds made available by, any State or subdivision, thereof, or any public or private organization, or individual, for surveys or investigations authorized herein, or for performing related surveying and mapping activities, including special purpose maps, and for the preparation and publication of the results thereof." (30 U.S.C. 883(e)).

Through Office of Management and Budget Circular A-16, (Bureau of the Budget, May 6, 1967, "Coordination of Surveying and Mapping Activities"), the National Geodetic Survey "exercises Government-wide leadership in assuring the coordinated planning and execution of its national geodetic control surveys and related survey activities of Federal agencies, including activities financed in whole or in part by such agencies . . .".

The Federal Geodetic Control Committee [FGCC], is an interagency and interdepartmental organization formed as a result of Circular A-16. At its January 15, 1985 meeting, the committee agreed to embark upon efforts to develop a multipurpose cadastre, with C&GS acting through FGCC as the lead, pending coordination with the other three Federal surveying and mapping coordinating committees [FGCC, Federal Interagency Coordinating Committee for Digital Cartography and the Interagency Cadastral Coordinating Committee). On April 10, 1985, the chairmen of these committees met and also agreed on efforts to develop a cadastre, with C&GS acting through FGCC as the lead.

REPORT LANGUAGE WILL CLARIFY LEAD ROLE OF THE OFFICE OF CHARTING AND GEODETIC SERVICES

Given the fact that statutory authority for such activity exists, the American Congress on Surveying and Mapping and the American Society for Photogrammetry and Remote Sensing urge Congress to provide report language in the NOAA authorization bill to clarify the agency's leadership role in the development of a multipurpose cadastre. These activities and authority will be exercised with existing funding. No new authorization or appropriation of funds will be required. As previously mentioned, such activities will result in a net savings to Federal, state, local and private entities.

The suggested report language follows:

"In order to provide cost effectiveness, efficiency and productivity in the modernization of the Nation's land record system, the committee encourages the Office of Charting and Geodetic Services, acting through the Federal Geodetic Control Committee, to provide leadership and enlist the support and cooperation of other Federal agencies, state and local goverment, and any public or private organizations, in the development of a multipurpose land information system. Such system shall include a reference frame consisting of a geodetic network; a series of current, accurate large-scale maps; a cadastral overlay delineating all cadastral parcels; a unique identifying number assigned to each parcel that is used as a common index of all land records in information systems; and a series of land data files, each including a parcel identifier for purposes of information retrieval and linking with information in other data files."

We urge the Committee to include this language in its report to accompany S. 990 in order to assure the effective and efficient development and dissemination of land information within and between the Federal government, state and local government and the private sector.

Sincerely,

John M. Palatiello,
Government Affairs Director.

CALIFORNIA COASTAL COMMISSION,
San Francisco, CA, May 8, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Sciences and Transportation, U.S. Senate, Senate Russel Office Building, Washington, DC.

DEAR SENATOR DANFORTH: It has come to our attention that at the Commerce Committee's May 3, 1985 hearings on reauthorization of the Coastal Zone Management Act [CZMA] several comments were made by a representative of Exxon Corporation concerning the California Coastal Management Program [CCMP] and the manner in which the CCMP is administered. Apparently Exxon claimed that the policies of the CCMP are too vague, that the Coastal Commission requires transportation of OCS oil by pipeline and prohibits marine tankering, and that the Commission acted illegally in objecting under Section 307(c)(3)(B) of the CZMA to an Exxon plan of exploration because of the adverse impacts the activity would have on commercial fishing activities. In addition, Exxon criticized NOAA for delays in processing appeals under Section 307(c)(3). We understand that Exxon offered these comments in an effort to suggest changes to Section 307(c)(3) of the CZMA. Since there were no representatives of the California Coastal Commission present at the hearings, we wish to take this opportunity to briefly respond to these comments before the Committee acts on any "consistency " amendments.

The California Attorney General also has responded in detail to each of Exxon's statements in a letter to the Committee on May 7, 1985. We fully support the Attorney General's position as outlined in his letter and believe that his statements accurately represent the facts of each of the situations in which Exxon has commented in attempting to discredit the federal consistency process in California. We believe Exxon's criticisms of this process and the Commission's administration of the CCMP are unwarranted. In the draft findings for the recent evaluation of the CCMP, NOAA made specific note of the sound organization of the Commission's federal consistency review process and the importance of this process in resolving problems. Moreover, the Department of Commerce's newly released draft comprehensive study on federal consistency concludes that federal consistency is working remarkably well nationwide. These evaluations are far more objective and reliable than Exxon's self-serving comments. We believe, therefore, that there is no substantial evidence for amending Section 307(c)(3) of the CZMA at this time in the manner suggested by Exxon Corporation.

It is our opinion that California has shown a high degree of support for needed energy development on the OCS. In fact, the California Coastal Commission has approved all eleven proposals for oil and gas production platforms submitted to it under Section 307(c)(3)(B) of the CZMA, including two development and production plans [DPP] by Exxon that include five OCS platforms (Exxon SYU, CC-7-83 and Exxon, Shamrock, CC-7-85). The Commission also has approved 96.6 percent of the plans of exploration submitted to its pursuant to its federal consistency authority.

One of the exploration plans to which the Commission objected was an Exxon proposal to drill in particularly productive fishing grounds off Santa Barbara. Exxon refused to comply with stipulations that would allow drilling during the off season, May through Thanksgiving. Exxon flatly refused to comply with this restriction which attempts to allow the oil and fishing industries to equitably share OCS resources. In fact, Exxon went so far as to argue before the Secretary of Commerce and in federal court that states have no authority to review impacts upon the commercial fishing industry through the CZMA. The Secretary of Commerce rejected Exxon's appeal and the federal court has not, as yet, issued an opinion. In contrast, Sun Oil has been drilling in compliance with the fishing stipulations on the adjoining lease with the Commission's and the fishing industry's concurrence.

The Commission's only objection to a DPP concerned Exxon's proposal to store, treat and transport the oil produced from its platforms proposed in the Santa Ynez Unit on an offshore tanker. The Commission approved the platforms in conjunction with an option proposed by Exxon to bring the oil onshore for treatment and distribution through a consolidated marine terminal or pipeline. Exxon again appealed the Commission's objection to the Secretary of Commerce and brought an action in federal court challenging the constitutionality of the CZMA's delegation of consistency authority to the states. At this time, both proceedings have been stayed until Exxon can secure permits for its onshore facilities and consolidated marine terminal. In fact, Exxon specifically requested the Secretary of Commerce to stay further consideration of its appeal pending the issuance of state and local permits.

We respectfully request that this letter, along with the response from the California Attorney General, be included in the Committee's hearing record and that it be brought to the attention of the other members of the Committee. We would be pleased to provide any additional information on these issues which the Committee may require.

Sincerely,

MICHAEL L. FISHER,
Executive Director.

STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE,
Los Angeles, CA, May 7, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR DANFORTH: On Friday May 3, 1985, the Commerce Committee conducted hearings on reauthorization of the Coastal Zone Management Act. It has come to our attention that during those hearings, a number of misstatements were made by a representative of Exxon Corporation concerning the California Coastal Management Program [CCMP] and the manner in which the CCMP is administered. It is our understanding that Exxon offered these views in an effort to suggest changes to section 307(c)(3) of the CZMA.

No representative of the California Coastal Commission [Commission] or of the California Attorney General was present at the hearing, so there was no opportunity to respond to these misstatements. We wish to respond briefly in this letter and therefore respectfully request that it both be included in the Committee's hearing record and that it be brought to the attention of the other members of the Committee.

First, Exxon apparently complained that the policies of the CCMP are too vague. This is not the first time this claim has been made by the oil industry. In 1977, the American Petroleum Institute and Exxon, among others, sued the Secretary of Commerce in an attempt to prevent approval of the CCMP. API and Exxon argued that the policies of the CCMP were to vague and that Commerce should be enjoined from approving the program. These contentions were rejected both by the federal district court in Los Angeles (*American Petroleum Institute* v. *Knecht* (C.D. Cal. 1978) 456 F.Supp. 889) and by the United States Court of Appeals for the Ninth Circuit (*American Petroleum Institute* v. *Knecht* (9th Cir. 1979) 609 F.2d 1506).

Second, Exxon apparently claimed that the California Coastal Commission has a policy requiring transportation of OCS oil by pipeline. This is incorrect. The commission has a policy preference for pipeline transportation of OCS oil because that form of transportation has a lower level of risk than does tankering. This preference does not mean that all tankering is prohibited. In fact, in a letter dated February 4, 1985, to Mr. B. L. Boyd, Exxon's California Operations Manager, the Executive Director of the Commission stated that Commission staff would recommend approval of a 140,000 barrel per day marine terminal in the Santa Barbara Channel. This terminal would serve tankers through a single anchor leg mooring system. (A copy of this letter is attached.) This hardly constitutes a requirement of pipelines.

Third, Exxon apparently claimed that the Commission acted illegally in objecting under section 307(c)(3)(B) to Exxon's plan of exploration (POE) for the Santa Rosa Unit. The Commission objected to this POE because of the adverse impacts the activity would have on the thresher shark fishery in the area. However, the Commission indicated that it could approve the POE if Exxon would agree to drill only during a 5 month period during the year (Thanksgiving to May) which would not disrupt the fishery (i.e., a "drilling window").[1] Exxon refused to agree to this and appealed to the Secretary of Commerce to override the Commission. In an opinion issued in November 1984, the Secretary of Commerce refused to override the Commission. The Secretary found that the drilling window provided Exxon with a reasonable alternative which would allow it to go forward with its activity. The refusal of the Secretary of Commerce to override the Commission precludes the issuance of a drilling permit by the Minerals Management Service.

Depsite this obstacle placed in its path by Commerce, Exxon has not challenged the Secretary's decision.[2] Finally, it must be emphasized that had Exxon agreed to drill during the drilling window, the Commission could have approved the POE expeditiously, and Exxon would have been able to drill its well. Given the failure of Exxon either to take advantage of the drilling window or to challenge the Commerce decision, it seems very odd that Exxon should be complaining to Congress about the actions of the Commission.

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[1] In fact, for an earlier well in this area, Exxon did agree to drill during this drilling window, the Commission approved the well, and the well was drilled.

[2] Exxon did sue the Coastal Commission immediately after the Commission objected to the POE. This case is still pending before a federal district court judge in Los Angeles.

Exxon also apparently asserted that review by the Commission of impacts on the thresher shark fishery was improper because the CZMA protects, through section 307(c)(3)(B), only the natural resources of the coastal zone. However, this ignores the clear language of the CZMA. Section 307(c)(3)(B) is invoked if the activity for which a permit is sought will affect any land or water use in the coastal zone. 16 U.S.C. § 1456(c)(3)(B). The CZMA broadly defines both land use ("activities which are conducted in, or on the shorelands within, the coastal zone" [16 U.S.C. § 1453(10)]) and water use ("activities which are conducted in or on the water" [16 U.S.C. § 1453(18)]). It is obvious that when the CZMA makes reference to land or water uses, it is referring to a broad range of impacts and not simply to the natural resources of the coastal zone. Moreover, a broad view of the CZMA in this area is fully appropriate given Congress' declaration that our national policy is:

"to encourage and assist *the states* to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, . . . " 16 U.S.C. § 1452(2); emphasis added.

In our view, Exxon has no real basis for criticism of the CCMP or of the Commission's administration of it. The Committee should be aware that in March 1985, NOAA's draft findings in its review of the CCMP were made available, and the Commission was generally commended on the manner in which it implemented our coastal program. This emphasizes the lack of substance in Exxon's critique.

Finally, Exxon criticizes NOAA for delays in the processing of appeals under section 307(c)(3). While this is an area more appropriate for NOAA to addrsess, it has frequently been our experience that delays in the appeals process are caused both by the parties and by the need to assemble a complete record. Indeed, Exxon itself recently requested Commerce to stay its consideration of the appeal on the Santa Ynez Unit development and production plan.

In our view, Exxon has hardly made a case for amendment of section 307(c)(3) of the CZMA. A close review of the points made by Exxon reveals, at a minimum, that there is another side to be presented and the points on that side are far more substantial than Exxon's. Should the Committee desire further information on these matters, we would be pleased to provide that information.

Yours truly,

John K. van de Kamp,
Attorney General.

John A. Saurenman,
Deputy Attorney General.

Attachment.

California Coastal Commission,
San Francisco, CA, February 4, 1985.

Mr. B. L. Boyd,
California Operations Manager, Exxon Co., U.S.A., Thousand Oaks, CA.

Dear Mr. Boyd: My staff and I appreciate the time you spent with us last Wednesday discussing Exxon's plans for the Santa Ynez Unit. Since then I have discussed our conversation and the contents of this letter with the Commission Chairman, Mel Nutter. I would like to take this opportunity to reiterate a few points we made during the discussion.

In June, 1983 the Commission concurred with your consistency certification for the OCS platforms needed to develop the Santa Ynez Unit. This action was a clear understanding by the Commission that developing the Santa Ynez Unit is in the public interest and a commitment to the fact that it can be accomplished in a manner consistent with the California Coastal Management Program. Although the Commission did not act on the withdrawn consistency certification for facilities proposed within state waters and on land, by concurring with the platforms, the Commission indicated that the concept of the onshore alternative was permittable under the Coastal Act. This position was recently reflected by the staff in its September, 1984 report on the progress of Option B, in which we stated that we were prepared to recommend concurrence based on recent siting consolidation and transportation commitments. We still stand by this recommendation. Therefore, we urge Exxon to reconsider its conclusion that onshore facilities are not feasible and reapply to the

Commission as soon as possible for a consolidated marine terminal offshore Las Flores, and to the County for the necessary onshore facilities.

We firmly believe the County's marine terminal siting study, which is being conducted as part of the Getty EIR, will be completed on schedule and that the County will determine that a terminal can be approved at either Las Flores or Gaviota. Filing a permit application now will give you an opportunity to express the reasons why you believe the Las Flores site is preferable to the Gaviota site.

You should submit a draft application to the Commission as soon as possible to allow our analysts time to review if for completeness and provide adequate time for you to submit the necessary information so we can file the application upon receipt of the County's terminal decision. Since the application you withdrew from our consideration in September, 1984, was found complete at the time, we believe it will not be difficult for you to provide the needed information to file a complete application. Assuming your application is complete and filed during the first week of March, we would schedule a hearing and possible vote on the permit application and appeal of the County's decision, if any, at the Commission's May 21–24 meeting in Los Angeles. We would also be prepared to schedule a second hearing at the June 11–14 meeting in case the Commision is unable to vote at the first meeting.

We were pleased to hear that a 140,000 B/D marine terminal located at either Las Flores or Gaviota could serve Exxon's needs. The Commission staff is prepared to recommend approval of a new, consolidated SALM terminal at one of these sites. We will be recommending that the approval be conditioned to require that all producers in the western Santa Barbara Channel and Santa Maria Basin be allowed equal access to a Commission-approved terminal based on a proration agreement without an arbitrary limitation. It is expected that each of the producers permitted to use such a consolidated facility will agree to use pipelines in accordance with the language certified by the Commission in its review of the Santa Barbara County LCP amendments, phase out its existing marine terminal facilities (such as the Capitan marine terminal and the OS&T), consolidate onshore facilities to the maximum extent feasible, maximize the terminal safety and reduce impacts on coastal resources. Under the Coastal Act any new development must be consistent with requirements imposed by the Santa Barbara County Air Pollution Control District. Therefore, we expect to propose a condition requiring approval of the District before the coastal development permit is effective.

We believe that these measures, along with a commitment to use pipelines consistent with the Santa Barbara County LCP policies, would result in a favorable recommendation to the Commission.

In conclusion, based on the information to date, the Commission staff will recommend approval of a marine terminal at either offshore Las Flores or Gaviota as outlined above. We believe it is in your best interest to file an application for the site you prefer as soon as possible. Our review of all permit applications, regardless of the application will be expeditious and in accordance with the Coastal Act and the Commission's regulations.

Very truly yours,

Michael L. Fischer,
Executive Director.

Exxon Company, U.S.A.,
Houston, TX, May 20, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Senate Russell Office Building, Washington, DC.

Dear Senator Danforth: The May 7, 1985 letter of California Attorney General John K. Van De Camp to you and other members of the Senate Committee on Commerce, Sciences and Transportation raises questions about the testimony I presented on behalf of API, WOGA and NOIA at the May 3 hearing on CZMA reauthorization chaired by Senator Stevens. I have analyzed that letter and have chosen to address the specific issues raised in the letter in the attached response.

Even though the response necessarily relates to Exxon's operations in California, I believe it further substantiates the testimony I presented on behalf of industry. Therefore, the letter from the California Attorney General's Office and Exxon's response should not be viewed, in any way, as limiting the problems raised by my testimony to either one state (California) or one company (Exxon). As I pointed out in both my original and supplemental testimony to the Commerce Committee, the problems associated with the Coastal Zone Management Act are national in scope and demonstrate the need for specific legislative action to clarify the consistency provisions of the Act.

Delayed development of the offshore California area, which holds 40 percent of the nation's proven offshore reserves, has significant fiscal, economic, and national security consequences for the entire nation. Moreover, California's misapplication of consistency establishes a precedent that could affect implementation of coastal management programs in other states where OCS oil and gas development may occur in the future. Unnecessary delays in OCS exploration and development, and the chilling effect of inappropriate consistency actions on the national OCS program, can be eliminated if the changes in the CZMA I recommended in my testimony are adopted by Congress.

It is also important to note that the letter you received represents the positions of the California Attorney General and the California Coastal Commission. Mr. John Saurenman, who authored the letter sent to you, testified at an April 2 hearing of the Oceanography Subcommittee of the House Merchant Marine Committee on the very subject of CZMA consistency. As was made clear by Mr. Saurenman, under questioning from Representatives Shumway and Breaux at the hearing, his opinions were not necessarily shared by Governor Deukmejian. In fact, Governor Deukmejian was opposed to a key position taken by Mr. Saurenman at the hearing, i.e., that the Supreme Court decision excluding OCS leasing from consistency review should be reversed.

I hope this letter and the attached response to the specific points raised by the California Attorney General's Office will be helpful to the Committee during its deliberations on this important subject and will be included in the Committee's hearing record. If the Committee needs any additional information regarding these matters, we would be happy to provide it.

Sincerely,

HARRY J. LONGWELL.

Attachment.

EXXON'S RESPONSE TO LETTER FROM THE OFFICE OF CALIFORNIA ATTORNEY GENERAL TO SENATOR DANFORTH

The following is a point-by-point response by Exxon to the issues raised by the May 7, 1985 letter of the California Attorney General's Office to Senator John Danforth regarding the California Coastal Management Program [CCMP] and the manner in which it is administered by the California Coastal Commission (CCC).

ISSUE 1—WHETHER THE POLICIES OF THE CCMP ARE TOO VAGUE

The Attorney General's Office first claims that industry's proposal to amend CZMA to require more specificity in state coastal policies is without merit because of a 1979 court decision (*American Petroleum Institute* v. *Knecht*) addressing the approvability of the CCMP. In that case, the court concluded that the California policies were not so vague as to render the approval of the CCMP by the National Oceanic and Atmospheric Administration [NOAA] invalid under the "arbitrary and capricious" standard of review applied to this federal agency action. However, the court would not speculate whether the state would utilize its consistency powers improperly to delay OCS development and suggested that this issue would be ripe for review only when a concrete controversy developed. Thus, this court decision concerning federal approval of the California program is irrelevant to our claim that more specificity is needed in state coastal policies to ensure that they are not improperly applied to OCS projects.

Even though the CCC has been exercising its federal consistency authority for nearly six years, offshore oil and gas operators, including Exxon, continue to have difficulty determining whether proposed activities will receive consistency concurrence because of the absence of specific program guidelines. Local coastal programs have not improved the situation; their adoption has been delayed and, in many causes, they have not provided additional program specificity. Time and experience has demonstrated that the vague CCMP policies have been improperly applied through consistency to specific OCS projects and that ligislative relief from this situation is warranted. A clarification of the CZMA is needed to avoid future misapplications of consistency arising from ambiguous state coastal policies.

ISSUE 2—WHETHER THE CCC HAS A POLICY REQUIRING TRANSPORTATION OF OCS CRUDE OIL BY PIPELINE

As an example of the problems that occur when coastal policies are non-specific, the industry testimony cited the California Coastal Commission's use of vague environmental protection policies to require pipeline transport of OCS oil even though there is no explicit coastal policy in the CCMP requiring the use of pipelines. The Attorney General's Office contends that Exxon is incorrect in asserting that the Commission has a policy requiring the use of pipelines and, as evidence of its flexibility concerning oil transportation, cites a recent Commission staff recommendation for approval of a marine terminal which would accommodate marine tankering of OCS oil.

In light of the Commission's statements and actions over the past five years, it is surprising that the Coastal Commission asserts that it has no policy requiring transportation of OCS oil by pipeline. As early as 1980, the Commission's Executive Director informed Exxon of the Commission's policy on the use of pipelines (see second page of attached letter dated March 6, 1980). In numerous staff reports and public statements made subsequent to this letter, the Commission or its staff has referred to its "longstanding California policy" that pipelines should be used whenever feasible. This policy has been stringently enforced by the Commission on each OCS development project that has come before it for consistency review in the last several years. Unless the applicant will commit to transport its production by pipeline, the Commission refuses to grant consistency or issue coastal development permits. Exxon's concern is that the Commission is using such general, ambiguous environmental policies to force pipeline use even though there is no specific pipeline policy (as the Attorney General's letter acknowledges) which has been properly incorporated into the CCMP.

The Attorney General's Office also fails to explain that the cited Commission staff recommendation for a marine terminal was made only after an extensive administrative appeal and litigation over the issue, and that only interim use of the terminal until pipelines are constructed is being recommended. Thus, it has taken nearly three years, during which time development of a large oil and gas reserve has been delayed, for an agreement to be obtained from the Commission staff for limited, temporary use of a transportation mode that from the beginning was not prohibited by coastal policies. Moreover, there is no assurance that the Commission will accept this staff recommendation and issue the necessary permits and consistency concurrence for the project. In several instances, including the recent Gulf Corporation consistency denial, the Commission has rejected its staff's concurrence recommendation.

ISSUE 3—WHETHER THE CCC LEGALLY APPLIED SECTION 307 (C) (3) (B) CONSISTENCY REVIEW TO EXXON'S PLAN OF EXPLORATION FOR THE SANTA ROSA UNIT

The Attorney General's Office also criticized industry's assertion that imposition by the Commission of seasonal drilling restrictions on OCS activities is an improper use of the consistency. There is no doubt, as their letter points out, that Exxon would have been granted consistency concurrence if it had agreed to restrict its drilling activities in the Santa Rosa Unit project area to the five-month period when thresher shark fishing does not take place. However, this restriction which protected the economic interest of a small goup of local fishermen, seriously interferes with OCS exploration and development. Exxon strongly believes that the Commission was acting beyond the legal authority conferred by Section 307 of the CZMA in imposing a drilling restriction on OCS operations and in so doing was establishing a practice that jeopardizes the national OCS program. The Secretary of Commerce declined to address this legal issue in his consideration of the appeal filed by Exxon. However, Exxon has not challenged the Secretary's decision because the issue concerning the validity of the seasonal drilling restriction is already pending before a Federal District Court as a result of action brought by Exxon against the Commission following the consistency denial. Such litigation to resolve this conflict is, in itself, evidence that legislation is needed to further define the scope of authority conferred by the CZMA. We continue to believe that the Commission's misinterpretation of its authority in this case is one of the best examples of why amendments to Section 307 are desirable.

The Attorney General's Office is also incorrect in its assertion that Exxon interprets Section 307(c)(3) to allow coastal states to use consistency to protect only the natural resources of the coastal zone. The petroleum industry has repeatedly acknowledged that under Section 307(c)(3) states may review those activities which affect land or water uses in the coastal zone, and have urged Congress to define the term "affecting land or water uses in the coastal zone" to ensure that this limitation on consistency reviews is clear. Clarification of the CZMA is needed to ensure that states focus their reviews on those aspects of the OCS project that will have direct and actual effects on land and water uses in the coastal zone. Congress never intended for consistency to be used to impose costly, time-consuming requirements which do not provide significant additional environmental protection beyond that provide by federal regulatory programs.

ISSUE 4—WHETHER EXXON IS JUSTLY CRITICAL OF DELAYS IN THE CONSISTENCY REVIEW PROCESS AND APPEAL PROCESS

In asserting that NOAA has been unjustifiably criticized for delays in the processing of Secretarial appeals under Section 307(c)(3), the Attorney General's Office has misstated our position. Exxon's concerns are directed at the override criteria and the delays inherent in the existing appeal process. CZMA changes which simplify and define the override criteria and create a practical expeditious appeal procedure will enable NOAA to process the appeals in a timely fashion. There is also the contention that Exxon contributed to the delays encountered with the Santa Ynez Unit development and production plan by requesting the Secretary of Commerce to stay his consideration of our appeal. As was noted under the response to Issue 2, the CCC's staff recommendation for a marine terminal has recently been made only after protracted litigation and administrative appeal over the issue. Exxon has stayed its appeal to the Secretary only because there is now a commitment on the part of local authorities in California to proceed with permitting decisions on a scheduled basis. Exxon has never used the consistency review or appeal process to slow or delay decision-making by either the CCC or NOAA. As we have stated, our objective is to expedite the processing of appeals and not to slow them down.

CALIFORNIA COASTAL COMMISSION,
San Francisco, CA, March 6, 1980.

Mr. HARRY J. LONGWELL,
Division Production Manager, Exxon Company USA, Los Angeles, CA.

DEAR HARRY: We are pleased that Exxon, Santa Barbara County and the State of California Air Resources Board have entered into the "Memorandum of Agreement—Hondo 'A' Development, Santa Ynez Unit, Santa Barbara Channel." We are especially heartened that you reached agreement on air pollution controls for your floating oil terminal and on continued zoning of the Las Flores Canyon site for onshore oil and gas processing facilities.

As I had pointed out to you in my January 15, 1980 letter, the Coastal Commission could not be a party to the agreement because we cannot precommit future Commission decisions. Therefore, the Commission is in no way bound by the terms of the agreement. We agreed to exchange letters with you, however, and we find it necessary to write because the section in the Agreement on future consistency reviews is not acceptable. We pointed this out in a February 15, 1980 latter to you, but as we were not a party to the agreement our revised language did not make its way into the document.

The following discussion presents our staff understanding on how Coastal Act policies will be applied in future Coastal Commission consistency proceedings on western Santa Barbara Channel offshore oil development proposals. Under Section 307(c)(3)(b) of the federal Coastal Zone Management Act [CZMA], the Department of the Interior cannot grant permits for OCS oil and gas exploration and development activities until the Coastal Commission has concurred with an oil company's certification that the proposed OCS activities are consistent with the California Coastal Management Program [CCMP]. If the Commission objects to an OCS activity, the company or Interior may appeal the objection to the Secretary of Commerce under Subpart H of 15 CFR Part 930, the NOAA regulations implementing the consistency provisions of the CZMA. The Secretary of Commerce may override the Commission's objection if the Secretary can either make four specific findings, including that the OCS activity furthers a competing national objective of the CZMA and there is no reasonable alternative, or, if the Secretary finds the activity is necessary in the interest of national security. Any party may, of course, appeal the Secretary's decision to the courts.

The federally approved CCMP is essentially the California Coastal Act of 1976, which has a number of policies relating to oil and gas production and transportation. The basic thrust of the policies is that such industrial facilities be consolidated to the maximum extent feasible, that such projects employ the feasible least environmentally damaging alternative, and that such projects mitigate any adverse environmental effects to the maximum extent feasible. As implemented by the Commission and regional coastal commissions in reviewing oil transportation projects, the commissions have found that pipeline transportation of oil is the least environmentally damaging alternative in place of tankers. In permits for Chevron and Shell, the commissions have required pipeline transportation for offshore oil production and have found it to be feasible Section 30108 of the Coastal Act defines "Feasible" as ". . . capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

When Exxon or another company requests Interior Department approval of new OCS activities described in a Plan of Development in the western Channel, those activities will be subject to consistency review by the Commission. If at that time the Commission finds that use of a pipeline is feasible to transport any new OCS oil production and that a pipeline is the least environmentally damaging oil transportation alternative, that would be the only transportation mode the Interior Department could permit for the OCS oil production, unless the Secretary of Commerce overrides. The Memorandum states that Exxon ". . . would then agree to be legally bound by such determination of onshore pipeline feasibility and to transport oil by pipeline if it elects in the future to construct and operate onshore oil facilities to process its OCS production . . ." (emphasis added). This is not correct. Under the CZMA consistency provisions, Exxon would have no such election—the plan of development would not permit offshore storage and treatment and Exxon would be required to come onshore for processing and transportation. Interior could not grant Exxon permits in the face of a Coastal Commission objection, even if Exxon wants to construct modified or added offshore OCS facilities.

I cite these procedures to make the record clear. My strongest hope is that we never have to go through such an objection resulting from a disagreement on offshore oil production and transportation. We applaud the air quality protection equipment added to your floating oil terminal in the Channel. We appreciate your making Exxon's property in Corral Canyon available to other oil companies for consolidating oil and gas facilities for the western Channel. That program makes oil and gas pipelines a permitted use in the County's coastal zone. This will encourage and expedite all oil and gas pipeline applications. Your agreement with the County on the POPCO gas project and the County's conceptual approval should resolve most issues that would be considered by the South Central Coast Regional Coastal Commission. That Commission will review the POPCO Project under our regulations which provide for rapid action once a local government has made its decision on a proposal coastal development.

The Memorandum status that Exxon's next OCS Plan of Development may address development of several fields in the Santa Ynez Unit. To prepare for that consistency review, we will undertake development of interpretive guidelines for offshore oil transportation and the feasibility of transportation alternatives for the Commission's consideration. I look forward to your participation, with the Santa Barbara Joint Government/Industry Pipeline Working Group, in development of those guidelines.

Very truly yours,

MICHAEL L. FISCHER,
Executive Director.

STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE,
Los Angeles, CA, June 17, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR DANFORTH: I have recently received a copy of a letter dated May 20, 1985, addressed to you from Mr. Harry Longwell of Exxon Corporation. Mr. Longwell's letter responded to our letter to you of May 7, 1985. Having reviewed Mr. Longwell's letter of May 20, a number of points should be addressed.

At the outset, it is important to recognize that Exxon appears to be recommending major changes to the CZMA solely because it [Exxon] is not entirely satisfied with the results of consistency reivew for two of its projects: the Santa Ynez Unit development and production plan and the Santa Rosa Unit plan of exploration. In focusing on these two projects, which we will discuss in more detail later, Exxon fails to note the large number of OCS projects which have been approved by the Coastal Commission. Over the past years, 108 plans of exploration ("POE") have been submitted for consistency review, and of these, 97% have been approved. Similarly, the Coastal Commission has approved all OCS platforms proposed in the development and production plans ("DPP") submitted to it.[1] Moreover, all of these projects have been reviewed within the time periods specified in § 307(c)(3)(B) of the CZMA. These OCS activities approved by the Coastal Commission should result in somewhere between $6 and $10 billion of construction. This is not a record of obstruction and delay for OCS activities, and this record does not justify the major changes to the CZMA which Exxon is seeking.

Finally, although Exxon asserts that the actions of the California Coastal Commission are indicative of problems in the consistency process nationwide, the most authoritative source of data on the consistency process, NOAA's recently completed consistency study, completely fails to support Exxon's claim. In fact, the NOAA study shows that generally the consistency process is working well nationwide in resolving disputes about coastal zone management.

Having made these general observations, we would like to address the four specific issues raised in Mr. Longwell's letter.

THE POLICIES OF THE CALIFORNIA COASTAL MANAGEMENT PROGRAM ARE NOT VAGUE?

Exxon continues to assert that the policies of the California Coastal Management Program ["CCMP"] are too vague, apparently because "offshore oil and gas operators, including Exxon, continue to have difficulty determining whether proposed activities will receive consistency concurrence. . . ." In view of the Coastal Commission's record of approving most of the POE's and DPP's which have come before it, it would seem that offshore oil and gas operators have enjoyed a large measure of success. Moreover, a review of the prior consistency concurrences of the Coastal Commission would inform the offshore operators of the controls and mitigation measures likely to be necessary for concurrence.

Exxon, however, seems to wish that coastal zone management programs be far more specific than they are now. The oil industry has previously indicated that it seeks some kind of blueprint for development in coastal management programs, with levels of specificity never required by Congress. However, Exxon has already lost this issue in the courts in *American Petroleum Institute* v. *Knecht* (C.D. Cal. 1978) 456 F. Supp. 889, affirmed (9th Cir. 1979) 609 F.2d 1306. In *American Petroleum Institute* v. *Knecht* the district court rejected Exxon's claim that more specificity should be required of the CCMP:

". . . Congress never intended that to be approvable under § 306 a management program must provide a 'zoning map' which would in flexibly commit the state in advance of receiving specific proposals to permitting particular activities in specific areas. *Nor did Congress intend* by using the langauge of 'objectives, policies, and standards' *to require that such program establish such detailed criteria that private users be able to rely on them as predictive devices for determining the fate of projects without interaction between the relevant state agencies and the user. . . .*

* * * * * * *

"In conclusion, to the extent plaintiffs' [e.g., the American Petroleum Institute, the Western Oil and Gas Association and Exxon] more specific challenges to the Acting Administrator's § 306 approval are premised on an interpretation of congressional intent to require that such programs include detailed criteria establishing a sufficiently high degree of predictability to enable a private user of the coastal zone to say with certainty that a given project must be deemed 'consistent' therewith, the Court rejects plaintiffs' contention." 456 F. Supp. at 919; emphasis added; footnote omitted; affirmed by the United States Court of Appeals for the Ninth Circuit at 609 F.2d 1306.

Although Mr. Longwell asserts that this decision is now "irrelevant", the above-quoted language is both very relevant and completely reasonable. State coastal agencies confront both a large variety and a large volume of projects. If coastal management programs were required to have the specificity sought by Mr. Longwell, they would have to be hundreds if not thousands of pages in length in order to provide specific criteria for each and every type of activity. Such programs would be completely unmanageable not only for the states which must develop and implement them but also for the federal government whose agencies must review and approve them. Moreover, even assuming that states could develop such programs, they would be completely inflexible because they could not anticipate every type of proposal that will require approval. Instead, as the courts have already ruled, the purposes of the CZMA are best served by coastal programs which provide guidelines and allow for their application to specific projects through discussion and negotiations.

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[1] It should be noted thaat 7 other plans of exploration and 1 other development and production plan submitted by Exxon for consistency review have been approved by the California Coastal Commission.

Finally, requiring federal government approval of the type of program Exxon seeks would, in effect, mean that the federal government would be making the coastal management decisions that Congress, in the CZMA, felt would be better left to the state and local governments which are both far closer and more knowledgeable about local coastal problems. We do not believe it is wise to reject this concept of cooperative federalism which is the cornerstone of the CZMA.

Given that the Coastal Commission has not used its policies to block OCS oil and gas development, and given that the courts have held that the policies of the CCMP are not impermissably vague, there is no basis for amending the CZMA to require more specificity.

THE COASTAL COMMISSION'S POLICY REGARDING PIPELINES IS COMPLETELY REASONABLE

Exxon next seems to assert that the Coastal Commission has an absolute policy of requiring pipelines for transportation of OCS oil. As an initial matter, Exxon's complaints about pipelines seem strained for several reasons. First, as the attached Exxon news release of May 7, 1984 makes clear, Exxon agreed to the use of a pipeline for oil produced from the Santa Ynez Unit and so told Santa Barbara County. (See attached testimony of D.E. Cornett, Exxon Corporation, to Santa Barbara Board of Supervisors, May 7, 1984.) Also, in another Exxon publication. Exxon praises the virtues of pipelines. (See attached page of *Exxon'84*.) Finally, Exxon's article agrees with the conclusion of the All American Pipeline Company that pipeline transportation is the least expensive mode of transportation. In fact, All American has estimated that its proposed pipeline would provide a savings of at least $1.00 per barrel over tankering through the Panama Canal.

Next, it is important to recognize that the pipeline condition which the Commission has imposed on DPP's is very limited. As stated in the Coastal Commission's concurrence in Texaco's DDP for Platform Harvest, onshore pipeline transportation of the oil produced occurs on the following circumstances:

"Texaco and its partners, Sun, Pennzoil, and Koch, commit to transporting the processed crude oil to refineries by regional pipeline, *if one is available. Until a pipeline(s) is/are built, and during emergencies after one is built to the market destinations the crude will be transported by other available means.*" Emphasis added.

Thus the Coastal Commission preference for pipelines which Exxon believes is so onerous comes into play only when a pipeline to refineries is available. Until such a pipeline is available, and in the event of emergencies, other modes of transportation--such as tankers—are permitted.

It is not difficult to understand why the Commission would prefer the use of pipelines to tankers. Within the past year, there have been two major tanker accidents along the coast of the United States. In July 1984, the tanker *Alvenus* ran aground near the Texas-Louisiana border spilling 2.27 million gallons of oil creating a slick 85 miles long. Then on October 31, 1984, the tanker *Puerto Rican* exploded and broke apart 10 miles outside of San Francisco Bay releasing up to 30,000 barrels (or 1.26 million gallons) of oil. The oil released from *Puerto Rican* has come ashore at Point Reyes National Seashore and on the Farallon Islands Marine Sanctuary. Moreover, oil continues to escape form the stern of the tanker which sank and has not been recovered. There have, of course, been a nubmer of other serious oil spills from tanker accidents over the years.

In light of justifiable concerns over tanker transportation, the Coastal Commission turned to the policies of the CCMP which mandate the protection and enhancement of the marine resources and biological productivity of the coastal zone. The Commission also considered provisions of the CCMP which require the mitigation of adverse impacts, to the maximum degree feasible, of coastal dependent industrial facilities and consolidation, to the maximum extent feasible and legally permissible, of new and expanded oil and gas facilities. In view of the policies of the CCMP, the Commission has determined that OCS oil should be transported in the most environmentally protective method available. A review of the evidence clearly illustrates that onshore pipelines, when available, are a more environmentally protective method of transportation than is tankering. Indeed, the California Legislature has recently enacted legislation which makes the same finding. Cal. Public Resources

Code § 30265(b). Thus, the Commission when conducting consistency reviews of development and production plans has sought commitments from oil company applicants that pipelines will be used for transport when and if pipelines are available. Under the circumstances, this is hardly unreasonable.

There is, however, a further factor which must be considered, i.e. national security. Overland pipelines within the United States are far more secure than tankering. As Robert Burford, Director of the Bureau of Land Management, Department of the Interior, has stated:

"[A]ll of us know and understand the instability of transportation through Central America [i.e. through the Panama Canal] and, therefore, the very real need for pipelines within lands under U.S. jurisdiction." Memorandum of November 28, 1983, attached.

Thus, setting aside any environmental benefits which accrue from pipelines, the Nation as a whole benefits from the use of pipelines because they reduce the potential for the disruption of our petroleum supplies.

Finally, Exxon also seems to complain about the fact that staff at the Coastal Commission is prepared to recommend approval of a 140,000 barrel a day, consolidated marine terminal for the Santa Barbara Channel. Exxon does not indicate why it is dissatisfied with a recommendation that would provide for tankering, except to state that it has taken a number of years to reach this point. It should be noted that a project as large as the Santa Ynez Unit cannot go through federal, state and local approval processes at high speed. Moreover, the Commission approved the OCS portion of the project several years ago, and the marine terminal has never been presented to the Commission for a vote. Finally, the litigation and administrative appeal to which Exxon refers, deal with the alternative to the marine terminal, i.e., a continuation and expansion of a floating offshore storage and treatment facility which would be moored in federal waters and from which the oil would be tankered. Exxon challenged the Commission's objection to this facility in both an administrative appeal to the Secretary of Commerce and in a lawsuit in federal court in San Francisco. The court has ordered that proceedings on the lawsuit be stayed pending completion of the appeal to Commerce, and in view of an apparent resolution of the dispute over the project, Exxon requested that Commerce stay further proceedings on the appeal.[2]

THE COASTAL COMMISSION'S OBJECTION TO EXXON'S SANTA ROSA UNIT POE WAS PROPER

Exxon argues that legislation is necessary because of the Commission's objection to a POE for the Santa Rosa Unit. As noted in our earlier letter of May 7, 1985, Exxon appealed this objection to the Secretary of Commerce who refused to overturn the Commission's objection. In the seven months since the ruling by Commerce, Exxon has taken no steps to challenge it, and based upon that inactivity, plus the statements in Mr. Longwell's letter, we conclude that Exxon accepts that decision. Therefore, a somewhat detailed review of that decision is in order. A copy of the opinion of the Secretary of Commerce is enclosed for your record.

The Coastal Commission objected to Exxon's Santa Rosa POE because the manner in which Exxon planned to conduct the drilling would disrupt the commercial thresher shark fishery in the area. Exxon has never disputed, either before the Secretary of Commerce or in litigation, that the fishery will be adversely affected. Instead Exxon has argued that these adverse effects do not constitute the type of effects which are subject to consistency review under section 307(c)(3)(B) of the CZMA. In effect, Exxon has argued that OCS oil and gas development must be regarded as the primary purpose of the CZMA and that the disruption by OCS oil development of other coastal and ocean uses, such as commerical fishing, must be disregarded.[3] It was just such an argument that the Secretary of Commerce rejected.

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[2] The Secretary of Commerce did issue an initial opinion on the appeal of the Commission's objection, and a copy of that opinion is enclosed for your record.

[3] The Secretary characterized Exxon's position as follows:

"The Appellant [Exxon] maintains that the effects of its proposed exploratory drilling on the thresher shark fishery are 'commerical' and 'economic' in nature and that such drilling does not affect 'land or water uses' of the coastal zone. Appellant argues that protection of OCS commercial fishing activities from space conflicts with other OCS activities is not a proper use of consitency because it does not affect a land use or water use in the coastal zone but only has a 'perceived economic impact.' Appellant's Supporting Statement 130. Appellant states that the sole responsibility for resolving OCS oil and gas and fishing conflicts rests with the Secretary of the Interior. *Id.* at 131." Exxon Decision of November 14, 1984, at 8.

The Secretary of Commerce found that the effects on land and water uses of disruption of the thresher shark fishery were limited but real.

The Secretary clearly determined that the impacts on the thresher shark fishery were proper for consistency review. Having made this finding, the Secretary went on to determine whether restricting Exxon to drilling between November and May provided a reasonable alternative which would allow Exxon to proceed. The Secretary's discussion of this issue was as follows:

"The Appellant [Exxon] does not argue that the alternative offered by the Commission is 'unavailable.' Based on the information in the record, I find that the proposed alternative is available; however, to satisfy the fourth element of Ground I, I must determine that the alternative is also 'reasonable.' "

* * * * * * *

"The Appellant asserts that the alternative of drilling its exploratory well outside the fishing season for the thresher shark imposes costs as a result of modifications the Appellant must make in its drilling programs. However, the record in this appeal does not indicate the magnitude of such costs, and does not provide an explanation, in the circumstances of this appeal, why exploratory drilling operations on Lease OCS P-0467 conducted outside the thresher shark fishing season, as proposed by the Commission, would involve greater costs than such operations conducted during the fishing season for this species, as proposed by the Appellant.

"*The record indicates that the Appellant has already drilled one exploratory well on Lease OCS P-0467 during January and February, 1984, thereby accommodating both its interest in Lease OCS P-0467 and the interest of the thresher shark fishermen in Fish Block 667.* The current thresher shark fishing season will soon end, making available to the Appellant an opportunity during a period of five months to carry out its exploratory operations on Lease OCS P-0467 without any degree of interference with the relatively new and developing commercial thresher shark fishery, without any adverse effects on the land or water uses of the coastal zone and, for that reason, fully consistent with the policies of the CCMP. The costs to the Appellant of conducting exploratory operations on Lease OCS P-0467 outside the thresher shark fishing season have not been shown to be any greater than the costs of such operations conducted during the fishing season. *Other oil companies, including Sun Oil, Chevron, Getty and Arco, have agreed to accommodate the fishing industry through limitations on their drilling activities* (transcript of November 8, 1983 Hearing 36-37), *which suggests to me that such restriction is not an unreasonable standard in the oil industry.* Balancing the costs of the alternative proposed by the Commission against its advantages, I find that the alternative is reasonable. Because I have found that there is a reasonable alternative available to the Appellant which would premit it to conduct its exploratory drilling on Lease OCS P-0467 in a manner consistent with the CCMP, I find that the Appellant has not met the fourth element of Ground I." Exxon Decision of November 14, 1984, at 13-15; emphasis added; citations and footnotes omitted.

Based on his conclusion that Exxon had a reasonable alternative to it, the Secretary concluded that the exploratory drilling proposed in the POE was not consistent with the objectives of the CZMA. It must be reiterated that although the Secretary addressed and rejected the issues Exxon has raised before your committee, Exxon has failed to take any steps to challenge the Secretary's decision.

Finally, Exxon claims that the definition it seeks of "affecting land or water uses in the coastal zone" is necessary to prevent the imposition of "costly, time-consuming requirements which do not provide significant additional environmental protection. . . ." This point appears to be made in the context of the dispute over the seasonal drilling restriction for Exxon's POE for the Santa Rosa Unit, and the Secretary of Commerce has already determined that the additional requirement imposed was reasonable. Moreover, it is contrary to the CZMA's principle of cooperative-federalism for federal agencies to dictate to a state that level of protection which is required for that state's coastal zone. It must be remembered that the members of the oil industry, including Exxon, have challenged very few of these "costly, time-consuming requirements" even though many POE's and DPP's have been subjected to consistency review. So again, there does not appear to be a real problem in this area.

THE OVERRIDE CRITERIA ARE SUFFICIENTLY CLEAR

Exxon's final point is to call for simplification and definition of the override criteria, and to create a more expeditious review procedure. As noted in our earlier letter, NOAA is the appropriate agency to respond to concerns about delays in the appeal process. For our part, it does seem worth noting that these appeals are complex matters which often generate lengthy pleadings and large transcripts from public hearings. For example, the appeal filed by Exxon on the Santa Ynez Unit was 400 pages in length. Obviously, if a complex matter is involved, NOAA must take the time to do a detailed, comprehensive review. A lesser level of review would do a disservice both to the applicant who initiated the appeal and to the state coastal agency.

As for simplifying and defining the override criteria, Exxon provides no specific recommendations. We would certainly oppose any change which weaken the standards for an override. Our experience on overrides clearly indicates that they are not being unreasonably denied. Two appeals have already been discussed in this letter: the Santa Rosa Unit POE where commerce refused to override because a reasonable alternative was available and the Santa Ynez Unit DPP where Commerce determined that more information was required before it could make a final determination on the appeal. In the one other opinion issued dealing with an oil project on the California OCS, Commerce did override the Commission's objection to Union Oil's POE for a tract in the Channel Islands National Marine Sanctuary. Thus Union was allowed to drill its exploratory well in the Sanctuary. A copy of the Union Oil decision is enclosed for your record. Thus, this record on overrides is not one which would dictate amendments weakening the criteria.

CONCLUSION

In concluding, we wish to return to a point made in opening: Exxon has recommended major legislative changes based on its dissatisfaction with the handling of two consistency reviews. However, Exxon's approach has ignored the large number of other consistency reviews which have occurred and which have resulted in approvals for the projects. Moreover, a review of the two projects about which Exxon voices dissatisfaction shows that the actions of the Coastal Commission and the Department of Commerce are reasonable and not unduly burdensome. When this is viewed in combination with NOAA's consistency study, it is apparent that the record does not support the type of alterations to the CZMA which Exxon has proposed.

We wish to thank you for this opportunity to present our views on these matters.

Very truly yours,

JOHN K. VAN DE KAMP,
Attorney General.

JOHN A. SAURENMAN,
Deputy Attorney General.

EXXON COMPANY, U.S.A.,
PUBLIC RELATIONS,
Thousands Oaks, CA, May 7, 1984.

Exxon Company, U.S.A., in testimony before the Santa Barbara County Board of Supervisors, announced it is willing to agree to use a pipeline to ship oil from its proposed Santa Ynez Unit development on essentially the basis that is currently being proposed by Santa Barbara County. This represents a major step toward resolution of a problem which has existed for several years.

The Company announced this change in position on the basis of: the Company's recognition of the County's desire for pipeline transportation; the All American Pipeline Company's progress in development of an economically sound pipeline venture; higher projections of industry crude production from the Santa Barbara Channel and Santa Maria basin; the County's recognition of each company's right to select refinery destinations; the County's recognition that economic viability must be considered; and Exxon's belief that the County will allow sufficient protections to avoid "creating a situation where we would become captive to a grossly inefficient transporation system".

Don Cornett, Exxon Environmental Conservation Manager, said "the company has heard the desires of the community and strongly supports the development of and economically sound pipeline to Texas". The County is currently developing policies for the transportation of oil. Cornett said "we propose over the next month that staff, industry and the community work together to finalize language that is supported by everyone."

Cornett also expressed the hope that resolution of this problem will permit decisionmakers to focus on the other important issues associated with development of these significant resources.

Direct all questions to Don Cornett, Santa Barbara Office, 963-9387.

STATEMENT OF D.E. CORNETT TO THE SANTA BARBARA COUNTY BOARD OF SUPERVISORS ON THE OIL TRANSPORTATION PLAN

Good morning Mr. Chairman and members of the board. I'm Don Cornett, environmental conservation manager for Exxon's western production division.

As I stated when I appeared before your board on April 17, Exxon supports the objective of establishing sound guidelines for considering oil and gas permit applications.

Exxon also understands and respects your desire for pipelines as the long-term crude transportation method. Accordingly, we are willing to get this issue behind us by setting our differences aside and agreeing to use a pipeline to transport our crude on essentially the basis you have been considering.

As I have said many times before, Exxon is not opposed to pipeline transportation. Our reservation over the past couple of years was related to fear that we would be required to use a pipeline that did not serve our preferred destination or lacked sufficient throughput volumes, thus creating a situation where we would become a captive to a grossly inefficient transportation system.

What's happened recently is that while there are still many unknowns, things are beginning to firm significantly. For example, projected production volumes have grown to the point that the viability of a West-East pipeline has improved. Evidence of this is the All American Pipeline Company's recent progress in planning and permitting a West to East pipeline.

Additionally, you have recognized that each operator must have the opportunity to move its crude to the operator's intended refinery destination. Also, you have expressed your intent to consider environmental factors and economics in requiring pipeline use.

Finally, we recognize that momentum has developed in support of consolidation of treating and transportation facilities. We strongly support consolidation and believe it is in the interest of industry and the county for this momentum to continue. In the last month, we have had fruitful discussions with serveral companies regarding consolidation in Las Flores Canyon. With your continued cooperation, consolidation in the canyon can become a reality.

We have reviewed staff's draft language and discussed it with staff. The main point that needs modification is the recognition that environmental factors and economics need to be balanced in requiring pipeline use. Accordingly, over the next month we propose that staff, industry and the community work together to finalize language that is supported by everyone and bring guidelines back to you for approval by June 18.

This schedule will put the guidelines in place in time for you to act on our Santa Ynez unit project by July 10. The coastal commission will then be in a position to ratify your action in October by acting on our consistency certification and coastal development permit application.

In conclusion, we are confident we are on the verge of resolving the tough problems that have kept us apart for years. This solution will assure that the county's preferences for pipeline transportation and consolidation will be achieved, as well as resolve the concerns of industry.

FINDINGS AND DECISION

IN THE MATTER OF THE APPEAL BY EXXON COMPANY, U.S.A. TO THE CONSISTENCY OBJECTION BY THE CALIFORNIA COASTAL COMMISSION TO EXXON'S PROPOSED DEVELOPMENT OF THE SANTA YNEZ UNIT BY MEANS OF DEVELOPMENT OPTION A

SYNOPSIS OF DECISION

Exxon Company, U.S.A., as operator of the Santa Ynez Unit (SYU) in the Western Santa Barbara Channel on the Outer Continental Shelf (OCS), submitted a Development and Production Plan (DPP) to the Minerals Management Service (MMS) of the Department of Interior requesting approval to develop further and increase production from its SYU reserves.

Two development options, which differ in the manner of crude oil treatment, storage and transportation, were proposed in the DPP. Both options would involve the installation of up to four oil and gas production platforms and associated pipelines on the OCS and the expansion of a natural gas treating facility under construction in Las Flores Canyon.

Under Option A, the oil would be treated and stored on a currently operating Offshore Storage and Treatment vessel (OS&T) located on the OCS about 3.2 miles from shore, and then off-loaded to U.S. flag marine tanker vessels for shipment to refineries in Texas. No State or local permits are required for the facilities described in Option A that are located outside California's three-mile territorial limit.

Under Option B, the oil would be transported via subsea pipeline to an onshore oil treating and storage facility which would be constructed in Las Flores Canyon. From there, the oil would move via a pipeline to a modernized marine terminal which would be constructed about one mile offshore for shipment by U.S. flag tankers to refineries. Exxon has applied to the State and local government permitting agencies in California for permits necessary to proceed with Option B.

The California Coastal Commission objected to Exxon's consistency certification for all facilities proposed in Option A. The Commission's objections focused on the expanded use of the OS&T and Exxon's alleged failure to consider a pipeline rather than tankers to transport the crude oil to refineries in Texas. The Commission concurred with Exxon's consistency certification for the "offshore" portion (OCS platforms and pipelines seaward of the three-mile limit) of Option B, but took no action with respect to the "onshore" portion (the pipeline to shore, onshore storage and treatment facilities, and marine terminal) because Exxon temporarily withdrew that portion from the Commission's consideration.

Under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 U.S.C. § 1456(c)(3)(A) and (B)), and 15 CFR 930.131 of the Department of Commerce's implementing regulations, the Commission's objection to Option A precludes all Federal agencies from issuing any permit or license necessary for the activity to proceed, unless the Secretary of Commerce finds that the activity may be Federally approved because it is consistent with the objectives and purposes of the CZMA or is otherwise necessary in the interest of national security.

On July 22, 1983, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR Part 930, the Department of Commerce's regulations governing the Secretary's review of an objected-to activity, Exxon (Appellant) filed with the Secretary of Commerce a Notice of Appeal together with a supporting statement requesting that the Secretary find that Option A is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security.

The Secretary deferred making a final decision on the appeal until April, 1984, when the final Environmental Impact Review/Environmental Impact Statement (EIR/EIS) on the activities proposed in the DPP being jointly prepared by the County of Santa Barbara, the State of California, and the Minerals Management Service (MMS) of the Department of the Interior, is expected to be completed and made available, when the State and local government permitting agencies in California are expected to have completed action on Exxon's applications for the permits necessary to carry out the "onshore" portions of Option B, and when the County of Santa Barbara's pipeline feasibility study is expected to be completed and made available. (pp. 6-27). The Secretary stated that the information in the final EIR/EIS would help him identify the activity's adverse effects on the natural resources of the coastal zone and its contribution to the national interests and to perform the required weighing. (pp. 8-12). The Secretary also stated that based on whether the State and local government permits are issued for Option B, on the information in the final EIR/EIS, on information in the County of Santa Barbara's pipeline feasibility study, and on information already in the record, he would then be able to find whether there is a "reasonable alternative available" to Exxon that would be consistent with the California Coastal Management Program and whether the national security interest would be significantly impaired if Exxon is not able to develop the SYU by means of Option A. (pp. 14-19).

The Secretary made several but not all of the findings required by the regulations before Federal agencies can consider whether to issue permits for Option A despite the consistency objection of the California Coastal Commission:

1. Ground I: "consistent with the objectives or purposes of the Act" (15 CFR 930.121).

   (a) The Secretary found that development of the SYU by means of Option A would further one or more of the competing national objectives or purposes of the CZMA. (pp. 6-8).

   (b) The Secretary delayed finding whether when performed separately or when its cumulative effects are considered, Option A would not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest pending the completion of the final EIR/EIS. (pp. 8-12).

   (c) The Secretary found that Option A would not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended. (pp. 12-14).

(d) The Secretary delayed finding whether there is no reasonable alternative to Option A available which would permit the activity to be conducted in a manner consistent with the coastal zone management program of California until the State and local government permitting agencies in California complete action on Exxon's application for the State and local permits necessary for Exxon to proceed with Option B, until the final EIR/EIS is made available, and until the County of Santa Barbara's pipeline feasibility study is made available. (pp. 14-19).

2. Ground II: "necessary in the interest of national security" (15 CFR 930.122).

The Secretary found that the development of the sizable oil and gas reserves of the SYU is in the interest of national security, and that if the SYU could not be developed by any means, the national security interest would be significantly impaired. (pp. 21-28). However, the Secretary delayed making any finding whether national defense or security interests would be significantly impaired if the Appellant is not permitted to develop its SYU reserves as proposed under Option A, pending the completion of final action by the State and local government permitting agencies in California on Exxon's applications for permits necessary for Exxon to proceed with Option B, until the final EIR/EIS is made available, and until the County of Santa Barbara's pipeline feasibility study is made available. (pp. 19-26).

The Secretary stated that if the Commission later finds that Option B is inconsistent with the California Coastal Management Program or if the County of Santa Barbara or the State of California deny the permits necessary to implement Option B or impose unreasonable permit conditions, he would resume consideration of the appeal and find that Option B is not an alternative available to the Appellant.

DECISION

Factual Background

On October 25, 1982, Exxon Company, U.S.A. (Appellant) as operator of the Santa Ynez Unit (SYU), 19 contiguous tracts leased to the Appellant, Chevron U.S.A., Inc., and Shell Oil Company for oil and gas development in the Western Santa Barbara Channel on the Outer Continental Shelf (OCS), submitted a Development and Production Plan (DPP) to the Minerals Management Service (MMS) of the Department of the Interior (Interior) requesting approval to develop further and increase production from its SYU oil and gas reserves. Admin. Record, Appellant's Supporting Statement, pp. 1-2. On December 27, 1982, MMS determined the submission of the DPP to be in accordance with its regulations. Admin. Record, DPP, Letter from H.T. Cypher, Regional Supervisor, Offshore Field Operations, Pacific OCS Region, to Exxon Company, U.S.A., December 29, 1982. On January 5, 1983, MMS submitted the DPP and Exxon's accompanying Environmental Report (ER) to the Commission for its consistency review under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(A) and (B). Admin. Record, Commission's Revised Findings, p. 6.

Appellant began oil and gas production in April, 1981, from the existing Hondo A platform in the SYU. Most of the gas produced from this platform is currently reinjected. The oil produced from Hondo A platform is transferred via subsea pipeline to the nearby Offshore Storage and Treatment vessel (OS&T) for treatment and storage. The OS&T, which is located 3.2 miles from the California shore (i.e., 0.2 miles outside the State's coastal zone), is a converted 50,000 deadweight-ton oil tanker with a length of 743 feet, a beam of 102 feet, and when fully loaded, a height of 155 feet above the water. The OS&T is attached to the ocean bottom by a Single Anchor Leg Mooring (SALM), which allows the OS&T to roll and pitch independently of the SALM and to rotate around it in response to shifting wind and surface currents. Tankers arrive once every 5 days to take on treated crude from the OS&T for shipment to Gulf Coast refineries. The OS&T can currently store 210,000 barrels of treated crude oil, 36,000 barrels of "offspec" crude, and 18,000 barrels of produced and treated water. Current production is 40 thousand barrels of oil per day (MBD). Admin. Record, Appellant's Supporting Statement, pp. 13-14; Appellant's Environmental Report, pp. 2-2, 2-3, 2-4.

The Appellant presented two proposals in its DPP for the further development and production of its SYU reserves, which it estimates to be approximately 300 to 400 million barrels of crude oil and 600 to 700 billion standard cubic feet of natural gas over a period of 25 to 35 years. Admin. Record, Appellant's Supporting Statement, p. 10. Appellant designated these proposals as development Options A and B. These options differ mainly in the size and location of the oil treating facilities and associated storage and transportation systems. Common to both options is the installation of up to four new production platforms in the SYU and an interconnecting pipeline system to transport the oil and gas to treating and storage facilities. Admin. Record, Appellant's Supporting Statement, pp. 2-4. Under both Options A and B, construction and installation of facilities will not start until 1986. Production from the first new platform is not expected until late 1988. Admin. Record, Appellant's Development and Production Plan, pp. I-6, XI-1; Appellant's Environmental Report, pp. 1.4-1, 2-8. Under Option A, the Appellant would increase the capacity of the existing OS&T from 40 MBD to 80 MBD by installing additional processing equipment in space allocated in the vessel's original design. After treatment, the crude oil will be stored on the OS&T and transported via tankers to the Appellant's refineries at Baytown, Texas. Natural gas would be processed at the gas treating facility under construction at Las Flores Canyon, which would be expanded from 30 to 90 million standard cubic feet of gas per day. Admin. Record, Appellant's Supporting Statement, pp. 3, 32-34.

Under Option B, the Appellant proposes to locate oil and gas storage and treatment facilities onshore. An oil treating facility with a capacity of 140 MBD, or almost twice the capacity of the expanded OS&T as planned under Option A, would be constructed in Las Flores Canyon. Treated crude oil would be stored at this site, and pipelined to a nearshore marine terminal for shipment to the Appellant's Gulf Coast refineries. Natural gas would be processed at the Las Flores Canyon gas treating facility, which would be expanded from 30 to 135 million standard cubic feet of natural gas per day. Once these treating and storage facilities are completed, the Appellant would discontinue the use of the OS&T and the SALM, and remove them from the SYU. Admin. Record, Appellant's Environmental Report, pp. 2-4, 2-5, 2-6; Appellant's Development and Production Plan, IX-24, 25, and 26.

Option B has two components - an "onshore" portion which comprises the nearshore marine terminal and the Las Flores Canyon oil and gas treating facilities; and an "offshore" portion consisting of the proposed new production platforms and an interconnecting pipeline system, both located outside the State's waters. Admin. Record, Commission's Revised Findings, pp. ii-v, 14; Appellant's Supporting Statement, p. 5.

MMS has declared that its approval of the Appellant's proposed development of the SYU would be a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. § 4321 et seq., which requires the preparation of an Environmental Impact Statement (EIS). The facilities proposed for the onshore portion of Option B to be located in State waters and in Santa Barbara County require State and local permits, and also must comply with the California Environmental Policy Act, which requires the preparation of an Environmental Impact Report (EIR).

MMS, the State of California and the County of Santa Barbara are preparing a joint EIR/EIS which will identify and assess the environmental consequences of Appellant's DPP, and consider alternatives to the proposed action. Admin. Record, Letter from Reid T. Stone, Regional Manager, MMS, to Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), August 18, 1983; Letter from Pasquale A. Alberico, Acting Director, Office of Federal Activities, EPA, to Peter L. Tweedt, Director, OCRM, NOAA, May 23, 1983; Commission's Response to Appeal, p. 7. The joint EIR/EIS is expected to be completed by March, 1984. Admin. Record, Joint Comments, City of Santa Barbara and County of Santa Barbara, September 27, 1983, pp. 15-17; Transcript of Public Hearing, October 4, 1983, Statement of County of Santa Barbara, pp. 37, 39.

The Appellant has applied for the necessary State and local permits for the onshore portion of Option B. Both the State and County, in accordance with California law, must reach their decisions whether to issue permits for the proposed onshore facilities by April, 1984. Admin. Record, Commission's Reponse to Appeal, p. 7; Joint Comments, City of Santa Barbara and County of Santa Barbara, September 27, 1983, pp. 15-17.

On June 23, 1983, the California Coastal Commission (Commission), the State of California's Federally-approved coastal zone management agency under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the Department of Commerce's implementing regulations, objected to Exxon's consistency certification for development Option A. The Commission's objection focused primarily on the expanded use of the OS&T and Exxon's alleged failure to consider adequately a pipeline rather than tankers to transport SYU crude oil to refineries in Texas.

The Commission concurred with Exxon's consistency certification for the "offshore" portion (OCS platforms and pipelines seaward of California's three-mile territorial limit) of Option B, but took no action with respect to the "onshore" portion (the pipeline to shore, onshore storage and treatment facilities, and marine terminal) because Exxon temporarily withdrew that portion from the Commission's consideration.

Under Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930.131 of Commerce's implementing regulations, the Commission's objection to Option A on the grounds that it is inconsistent with the California Coastal Management Program

(CCMP) precludes all Federal agencies from issuing any permit or license necessary for the activity to proceed, unless the Secretary of Commerce determines that the activity may be Federally approved because the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. However, because the Commission concurred with the "offshore" portion of Option B, Federal agencies may consider the issuance of any permit or license described in detail in the DPP concerning this portion of Option B.

Appeal to the Secretary of Commerce

On July 22, 1983, the Appellant, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930 Subpart H, Commerce's regulations governing the review of an objected-to activity, filed with the Secretary of Commerce (Secretary) a Notice of Appeal together with supporting information requesting that he find that Option A is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security. The Secretary has reserved the authority to decide such appeals. Department Organization Order 25-5A, Section 3.01(w).

Following receipt of Appellant's appeal and supporting information by the Secretary, Commerce published a public notice of the appeal in the Federal Register (48 Fed. Reg. 35692 (1983)), and in local newspapers in San Francisco, Los Angeles and Santa Barbara, California. Commerce held a public hearing in this appeal in Santa Barbara, California, on October 4, 1983.

Comments on the national security interests related to Exxon's proposed activity were requested and received from the Departments of Defense, State, Interior, Treasury, Labor, Transportation and Energy. Comments on the air and water pollution aspects of the activity were requested and received from the Environmental Protection Agency (EPA) and Interior.

Additional comments and information have been received from the Appellant, the Commission (including the record of Appellant's proceedings before it) and Interior. Numerous comments by individuals and organizations were received during the course of the appeal and particularly as a result of the public hearing in Santa Barbara on October 4, 1983. The County of Santa Barbara and the City of Santa Barbara also filed joint comments. All material regarding this appeal received by Commerce during the course of the appeal has been included in the record.

I find that this appeal is properly under consideration and that the parties -- the Appellant and the Commission -- have complied with Commerce's regulations governing my consideration of this appeal (Subparts E and H of 15 CFR Part 930).

Grounds for Sustaining an Appeal

Subparagraphs A and B of Section 307(c)(3) of the CZMA provide that Federal licenses or permits for activities described in an OCS exploration or development plan may not be granted until either the State concurs in the consistency of such activities with its Federally-approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or the Secretary of Commerce finds, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that each activity described in detail in such plan is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

The regulations interpreting these two statutory grounds for allowing Federal approval despite a State's consistency objection are found at 15 CFR 930.121 ("consistent with the objectives or purposes of the Act") and 930.122 ("necessary in the interest of national security").

15 CFR 930.121:

> The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:
>
> (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,
>
> (b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,
>
> (c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and
>
> (d) There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

15 CFR 930.122:

> The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management

> program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

The regulations governing the Secretary's consideration of an appeal provide:

> [T]he Secretary shall find that a proposed Federal license or permit activity ... is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.
> 15 CFR 930.130.

This regulation must be read in conjunction with the regulations at 15 CFR 930.121 and 930.122 interpreting the two statutory grounds in order to determine whether the information received during this appeal supports making either of the requisite findings.

Ground I: Consistent with the Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, the Secretary must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, the Secretary must find that:

> The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the [CZMA].
> 15 CFR 930.121(a).

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which, in the context of this appeal, may be generally stated as follows:

1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a),(b),(c),(d),(e),(f),(g), and (i); and Section 303(1));

2. To develop the resources of the coastal zone (Section 302(a),(b) and (i); and Section 303(1)); and

3. To encourage and assist the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources, in recognition by the Congress that State action is the "key" to more effective protection and use of the resources of the coastal zone (Section 302 (h) and (i); and Section 303(2)).

These broadly-stated objectives of the CZMA concern the resources of the "coastal zone," which is defined by Section 304(1) of the CZMA to include "coastal waters ... 'to the outer limits of the United States territorial sea." California's coastal zone extends seaward to the three-mile limit of the territorial sea. While Appellant's proposed OCS development activity primarily concerns resources located outside the coastal zone, the CZMA recognizes that activities requiring Federal permits involving the development of resources outside the coastal zone may affect coastal zone land and water resources:

1. By acknowledging the need to resolve conflicts among the competing demands for "food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities" in "coastal and *ocean waters*" (Section 302(f), emphasis added);

2. By providing Federal financial assistance to meet State and local needs resulting from new or expanded energy activities in or *affecting the coastal zone*, as a means of attaining the national objective of energy self-sufficiency (Section 302(j), emphasis added); and

3. By requiring coastal States to develop management programs that give priority consideration "to coastal-dependent uses and orderly processes for citing major facilities related to national defense, *energy*, fisheries development, recreation, ports and transportation ... (Section 303(2)(c), emphasis added).

Indeed, requiring OCS exploration, development and production activities to be consistent with Federally-approved State coastal management programs under Section 307(c)(3)(B) of the CZMA when such activities affect land and water uses of the coastal zone is itself an indication that OCS development activities are included within the objectives and purposes of the Act.

Because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. 42 *Fed*. *Reg*. 43594 (1977).

Appellant's development Option A for the SYU involves the ultimate production of substantial quantities of oil and gas from an area offshore California (supra, pp. 1-2). As discussed above, the development of offshore oil and gas resources and a consideration of the effects of such development on the resources of the coastal zone are among the objectives of the CZMA when such activities require Federal permits. Because the record shows that Option A falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA, I find that the Appellant's proposed development Option A satisfies the first element of Ground I.

Second Element

To satisfy the second element of Ground I, the Secretary must find that:

> When performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.
>
> 15 CFR 930.121(b).

This element requires that the Secretary weigh the adverse effects of the objected-to activity on the natural resources of the coastal zone against its contribution to the national interest.

Adverse Effects

The Commission in objecting to Option A made certain findings, disputed by the Appellant, regarding the adverse effects of Appellant's activity on the natural resources of California's coastal zone. Admin. Record, Commission's Revised Findings, pp. 87-115; Appellant's Supporting Statement, pp. 150-256.

The effects on the natural resources of California's coastal zone which may be caused by Appellant's OCS development activities under Option A are currently being studied as part of the joint Federal/State environmental review of Appellant's DPP. This review will culminate soon in the publication of a final EIR/EIS describing in detail the environmental consequences of Appellant's proposed OCS development activities. The final EIR/EIS will contain information which will help me decide what the adverse effects will be. Therefore, pending the completion of the final EIR/EIS, I am delaying making any findings regarding the adverse effects of the Appellant's activity. Because completion of the joint EIR/EIS is necessary before any Federal permits may be issued allowing the Appellant to implement the OCS development activities under Option A, this action should not lengthen appreciably the permitting process.

Contribution to the National Interest

Section 306(c)(8) of the CZMA provides that a State coastal management program must consider the national interest involved in the planning and siting of facilities, including energy facilities, "which are necessary to meet requirements which are other than local in nature." Commerce's regulations implementing this provision of the Act indicate that there are several ways to determine the national interest in a particular project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by Federal agencies. 15 CFR Part 923, 44 Fed. Reg. 18590, 18591 (1979); and comment to 15 CFR 923.52(c)(2), 44 Fed. Reg. 18608 (1979). Commerce's regulations also encourage State programs to seek assistance from Commerce in soliciting the views of Federal agencies on the national interest served by a proposed project or activity. 15 CFR 923.52(c), 44 Fed. Reg. 18609 (1979).

At the request of the Commission and prior to the Commission's reaching its consistency decision on Appellant's DPP, Commerce sought the views of certain Federal agencies concerning the national interest in the Appellant's project to develop and produce SYU oil and gas reserves as proposed in the DPP, including both Option A and Option B, and forwarded their responses to the Commission. Admin. Record, Letter from Secretary Baldrige, April 25, 1983.

Summaries of the views expressed by Federal agencies regarding the national interest in this project follow below:

Interior stated that the development of the SYU will reduce the Nation's dependence on foreign crude oil and will provide economic benefits at the local, State and national levels. Admin. Record, Letter from J.J. Simmons III, Acting Secretary, Department of the Interior, to Malcolm Baldrige, Secretary of Commerce, June 7, 1983.

The Department of Defense supported development of the SYU in order to reduce dependence on unstable sources of oil in the interest of national security. Admin. Record, Letter from R.D. Webster, Deputy Assistant Secretary of Defense, to Peter Tweedt, Director, OCRM, NOAA, May 13, 1983.

The Department of Energy commented that the development of offshore oil would offset the decline in domestic crude oil production from the lower 48 states, and reduce the dependence on imported oil. Admin. Record, Letter from Donald P. Hodel, Secretary of Energy, to Malcolm Baldrige, Secretary of Commerce, May 25, 1983.

The Federal Energy Regulatory Commission (FERC) noted that development of the SYU would reduce dependence on foreign energy sources, and stated that such development:

> [S]hould proceed in a manner which is compatible with the environment and which gives full consideration to all practical efforts to mitigate any expected impact from the project.

FERC also expressed the view that the increased gas production from the SYU is expected to lower costs to natural gas users. Admin. Record, Letter from William G. McDonald, Executive Director, FERC, to Peter L. Tweedt, Director, OCRM, NOAA, May 10, 1983.

The Department of Transportation stated that development of the SYU would stimulate economic growth and provide jobs, increase Federal, State and local government revenues, and reduce dependence on foreign sources of oil. The Department commented that these benefits would result "regardless of which of the two oil storage and treatment plans ... is utilized." Admin. Record, Letter from Charles Swinburn, Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation, to Peter L. Tweedt, Director, OCRM, NOAA, May 20, 1983.

The Department of Labor noted that development of the SYU would provide new jobs and reduce dependence on foreign oil imports, and also stated that transportation of the crude oil from California to Gulf region refineries would support the U.S. shipping industry. Admin. Record, Letter from Daniel K. Benjamin, Acting Assistant Secretary for Policy, Department of Labor, to Peter L. Tweedt, Director, OCRM, NOAA, June 30, 1983.

The National Marine Fisheries Service (NMFS) commented that the impacts of Appellant's project on commercial and recreational fisheries, marine mammals and endangered species would be addressed in the joint Federal/State environmental review process, and that NMFS would participate in this process. Admin. Record, Memorandum from William Gordon, Director, NMFS, to Peter L. Tweedt, Director, OCRM, NOAA, June 28, 1983.

The EPA noted its participation in the joint Federal/State review, and identified air and water quality as national interests affected by Appellant's project. Specifically, EPA's comments concern the separate and cumulative effects of routine operational discharges and oil spills on the marine environment. Admin. Record, Letter from Pasquale A. Alberico, Acting Director, Office of Federal Activities, EPA, to Peter L. Tweedt, Director, OCRM, NOAA, May 23, 1983.

The Appellant cites the national policies of the Outer Continental Shelf Lands Act, as amended (OCSLA), 42 U.S.C. § 1331 et seq., and the CZMA as sources for determining the national interest in its project, and asserts that the development of the SYU as proposed under Option A contributes to these goals. Admin. Record, Appellant's Supporting Statement, p. 176. The Appellant submits that the development and production of the SYU as proposed in Option A will contribute to each of the national interests cited in the purposes section of the OCSLA, namely, "to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." 43 U.S.C. § 1802. Admin. Record, Appellant's Supporting Statement, pp. 179-201. With respect to energy policy goals, the Appellant asserts that development of SYU reserves would reduce dependence on foreign oil. Under Option A, SYU peak production of 80 MBD of crude oil would represent 2.5 percent of total U.S. crude imports during the first five months of 1983. Admin. Record, Appellant's Supporting Statement, pp. 180-181. The Appellant contends that its proposed development would promote national security mainly by providing a secure domestic source of energy, and by adding at least seven tankers with the capacity of almost 400,000 deadweight tons to the U.S. merchant fleet. Admin. Record, Appellant's Supporting Statement, pp. 183-186. The Appellant also asserts that the SYU project will generate substantial tax revenues to the Federal, State and local governments, and create approximately 45,000 new jobs from a capital expenditure of $1.2 billion to develop the SYU. Admin. Record, Appellant's Supporting Statement, pp. 187-193. According to the Appellant, the SYU project will help maintain a favorable balance of payments by reducing the need for purchases of imported oil which would improve the net U.S. balance of trade position by about $1.5 to $2.5 billion in the peak production year. Admin. Record, Appellant's Supporting Statement, p. 193.

Although the Commission objected to Appellant's development Option A, it concluded that the development of SYU reserves would be "undeniably in the national interest ...." Admin. Record, Commission's Response to Appeal, pp. 9-10. However, the Commission asserts that the development of SYU by the means proposed in Option A would not contribute to the national interest because Option A "presents unacceptable risks and precludes sound comprehensive planning." Admin. Record, Commission's Response to Appeal, p. 21. For example, the Commission contends that the expanded use of the OS&T as proposed in Option A would prevent the State and local governments from achieving their goal of consolidating marine transportation facilities, which is necessary in order to mitigate adverse individual and cumulative impacts on the coastal zone. Admin. Record, Commission's Response to Appeal, p. 27.

After considering the information submitted by the parties to this appeal, and the comments provided by Federal agencies concerning the national interests served by the Appellant's project, I find that the production of the oil and gas resources of the SYU is in the national interest. The record in this appeal indicates that the parties are in substantial agreement on the national interests served by the ultimate production of the sizable oil and gas reserves of the SYU.

Such production would contribute to the national interest by reducing the Nation's dependence on foreign sources of oil, thereby furthering national security and economic interests, including employment opportunities and maintaining a favorable balance of payments in world trade. Although development of the SYU reserves is in the national interest, I am delaying making any finding regarding the national interests served by Option A.

I have already delayed making any findings regarding the adverse effects caused by Appellant's project until the joint EIR/EIS is completed. The EIR/EIS also will provide information germane to the national interests expressed in the CZMA which may be affected by Option A. Specifically, I expect that the final EIR/EIS will contain information which will help me decide whether Option A would contribute to the national interest in the effective management, beneficial use, protection and development of the coastal zone expressed in Section 302(a) of the CZMA. Pending completion of the EIR/EIS, I am unable to weigh the adverse effects of Appellant's Option A on the natural resources of California's coastal zone against its contributions to the national interest.

Third Element

To satisfy the third element of Ground I, the Secretary must find that:

> The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.
> 15 CFR 930.121(c).

The Clean Air Act

The Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., directs the Administrator of the EPA to prescribe national ambient air quality standards (NAAQS's) for air pollutants to protect the public health and welfare. Each State is required to prepare, for EPA approval, and enforce an implementation plan for attaining and maintaining the NAAQS's for the air mass over the State. 42 U.S.C. § 8410.

Appellant's offshore facilities for its proposed Option A activities, including the OS&T, will be located on the OCS outside the State of California's three-mile territorial limit, with the exception of pipelines carrying gas through State waters to processing and storage facilities located onshore. Emissions from the offshore facilities, however, will likely affect Santa Barbara and Ventura counties, neither of which has yet met the NAAQS for ozone.

The Commission asserts that the Appellant has not met its burden of proof that its activities under Option A will not violate any requirements of the CAA, and that those activities may have substantial air quality impacts onshore which may jeopardize the efforts of Santa Barbara and Ventura counties to meet the NAAQS's established by EPA. The Commission further asserts that notwithstanding Interior's jurisdiction to regulate emissions on the OCS under the OCSLA (42 U.S.C. § 1334 (a)(8)), the CZMA and consistency regulations prescribe that requirements of the CAA determine the air quality standards of the State program, and that they are also the standards which must be considered in this appeal. Admin. Record, Commission's Response, p. 27.

The Appellant maintains that Option A will not violate the CAA because, according to the provisions of the OCSLA, Interior has been granted exclusive jurisdiction to regulate OCS emissions from its OS&T to ensure onshore compliance with NAAQS's, and that by meeting Interior's standards, the Appellant will necessarily comply with the CAA. The Appellant cites, in support of its position, *California v. Kleppe*, 604 F.2d 1187 (9th Cir. 1979), which held that Interior has exclusive jurisdiction under the OCSLA to regulate air emissions from oil and gas activities on the OCS, and that Interior must set OCS emission standards at a level which will permit State and local governments to attain the air quality standards of the CAA. *Kleppe*, p. 1196.

Interior stated in a letter to Commerce regarding the CAA aspects of this appeal that it has promulgated regulations to ensure that OCS activities including the Appellant's proposed activities comply with the ambient air quality standards established pursuant to the CAA. The letter emphasized that it is mandatory that all OCS activities including Appellant's Option A comply with those regulations. Admin. Record, Letter from Garrey E. Carruthers, Assistant Secretary for Land and Minerals Management, Interior, to John V. Bryne, Administrator, NOAA, January 10, 1984.

Under *Kleppe*, the Secretary of the Interior must set emission standards for Appellant's development activities on the OCS at levels which will ensure that CAA requirements are met. Further, the Secretary of the Interior has promulgated regulations to ensure that OCS activities including Appellant's Option A meet CAA requirements and the Appellant is required to comply with those requirements. Therefore, I find that Appellant's proposed activity will not violate any requirement of the Clean Air Act.

The Clean Water Act

The Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as amended, (the Clean Water Act), provides that the discharge of pollutants is unlawful except in accordance with a National Pollution Discharge Elimination System (NPDES) permit issued by the Administrator of EPA. Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342. Thus, a facility operated in compliance with the terms and conditions of its NPDES permit would comply with the requirements of the Clean Water Act. Letter from Josephine S. Cooper, Assistant

Administrator for External Affairs, EPA, to John V. Byrne, Administrator, NOAA, December 22, 1983. Among the categories of discharges regulated under the Clean Water Act are drill muds and cuttings.

A general NPDES permit is currently in effect which covers the area of Appellant's proposed OCS activities. This permit has been extended to July 1, 1984. However, the extended permit will not cover Appellant's proposed activities which are scheduled to begin in 1987. EPA has stated that a new general NPDES permit for Appellant's geographic area will be issued in July, 1984. After issuance of the new general permit, the Appellant may request that its proposed activities in the SYU be covered by the general permit. EPA will then determine whether the general permit applies to Appellant's project, or may require the Appellant to apply for an individual permit. In either case, the Appellant's activities will have to comply with the NPDES permit issued by EPA. Id.

The Administrator of EPA must include terms and conditions in the NPDES general or individual permit covering Appellant's proposed activities that will assure that the activities will not violate any requirement of the Clean Water Act. Because the Appellant cannot construct or operate the proposed facilities without such an NPDES permit and must comply with its terms and conditions, I find that the Appellant's activity will not violate any requirement of the Clean Water Act.

Fourth Element

To satisfy the fourth element of Ground I, the Secretary must find that:

> There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal zone] management program.
> 15 CFR 930.121(d).

The regulation cited above indicates that an alternative may involve major changes in the "location" or "design" of a proposed project to make it consistent with the State's coastal management program. Whether such an alternative is reasonable depends upon its feasibility and upon balancing the estimated increased costs of the alternative against its expected advantages. In the present case, the Appellant has itself proposed and initially certified as consistent with the CCMP both Options A and B, and the Appellant is now pursuing Federal, State and local permits which, if issued, will allow the Appellant to implement Option B (supra, p. 3). The record in this appeal does not at this time support the finding that Option B or any of its elements (project "location[,] design, etc.") is an "unreasonable" alternative to Option A or its constituent elements, and no argument has been offered to this effect.

Appellant argues, however, that development Option B is not a "reasonable alternative available" to it because:

> (1) Option B has not yet been "deemed," or concurred in by the Commission to be, consistent and, therefore, does not meet the requirement that an alternative be consistent with the State's coastal management program (Admin. Record, Appellant's Supporting Statement, p. 323); and
>
> (2) Option B is not "available" immediately to the Appellant because implementation of Option B requires Federal, State and local approvals which have not yet been received by the Appellant (Admin. Record, Appellant's Supporting Statement, pp. 323-324).

This argument misconstrues 15 CFR 930.121(d), which does not require that an alternative must be "deemed" to be consistent with a State's coastal management program, in the sense that the State coastal management agency must have already issued a formal consistency concurrence, or that the alternative must be immediately available to the Appellant, without further action by Federal, State and local agencies, before the Secretary may find that there is a reasonable alternative available which would permit the activity to be conducted in a manner consistent with the State's coastal management program.

While a State coastal management agency is required, when it objects to a proposed activity included in an OCS plan, to describe:

> (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program (15 CFR 930.64(b)),

this requirement does not mean that the State agency must formally "concur" in the consistency of the identified alternative with the State's program. In this case, the Appellant has withdrawn its consistency certification for the "onshore" portion of Option B, precluding the Commission's concurrence as well as its objection to Option B in its entirety. The record indicates that the Appellant and the Commission agreed upon this procedure in order to allow the State and local decisionmaking process to go forward on Appellant's permit applications concerning Option B. Admin. Record, Commission's Administrative Record, Transcript of Hearing, June 23, 1983, pp. 012102-012105; 012180-12182.

The requirement that an alternative must be "available" to an appellant does not mean that the alternative must not require any approval by Federal, State and local agencies before it may be carried out. The expectation that Federal, State and local agencies may impose certain restrictions on the alternative project consistent with their permitting authority does not mean that the alternative is "unavailable." Of course, decisions by State and local agencies denying the permits necessary to implement an alternative or imposing unreasonable permit conditions would mean that the alternative is not "available."

The record in this appeal indicates that the Commission has concurred in the consistency certification by the Appellant that a major portion of Option B related to the construction and operation of the offshore OCS platforms and interconnecting pipelines is consistent with the CCMP. Admin. Record, Commission's Administrative Record, Transcript of Hearing, June 23, 1983, pp. 012251-012252. The Appellant, with the approval of the MMS and the Commission, on the day of its hearing before the Commission on the SYU DPP, June 23, 1983, withdrew its consistency certification for the elements of development Option B other than the offshore OCS platforms and interconnecting pipelines. In response to Appellant's action, the Commission made no findings regarding the consistency of the remaining "onshore" elements of Option B, including the proposed marine terminal and the onshore oil and gas treating and storage facilities described in the DPP, pending the completion of the joint EIR/EIS and studies by the County of Santa Barbara concerning the onshore elements of Option B and other aspects of the DPP. Admin. Record, Commission's Administrative Record, Transcript of Hearing, June 23, 1983, p. 012252. The record indicates that the Appellant stated it would resubmit its consistency certification on the "onshore" portion of Option B as soon as this necessary information and data are completed. Admin. Record, Commission's Administrative Record, Transcript of Hearing, June 23, 1983, p. 012103.

In concurring in the Appellant's certification that the "offshore" portion of Option B is consistent with the CCMP, the Commission found that the adverse effects resulting from the construction and operation of the OCS platforms and interconnecting pipelines were mitigated to the maximum extent feasible in accordance with California law, and, therefore, it could approve the "offshore" portion of Option B. The mitigation measures accepted by the Appellant in connection with the "offshore" portion of Option B concern such matters as oil spill contingency planning and equipment; the disposal of drill muds and cuttings; commercial fishing; and effects on coastal visual and scenic resources. Admin. Record, Commission's Revised Findings, pp. 61-69.

The "offshore" portions of both development Options A and B are similar, except with respect to the alternative mitigation measures recommended by the Commission and incorporated into Option B by the Appellant. Therefore, regarding that portion of Option A describing the OCS platforms and interconnecting pipelines, I find that the "offshore" portion of Option B as approved by the Commission is "a reasonable alternative available" to the Appellant.

Regarding the second major portion of development Option A, which proposes the expanded use of the existing OS&T, I am delaying making any finding whether "there is no reasonable alternative available" to the Appellant which would permit the activity to be conducted in a manner consistent with the CCMP. 15 CFR 930.121(d). The Appellant initially certified that Option B is consistent with the CCMP. Admin. Record, Appellant's Supporting Statement, p. 4. Further, the Appellant, the County and the Commission, in addition to other State and Federal agencies, are currently reviewing Options A and B as part of the joint Federal/State environmental review process, and a final EIR/EIS is expected by April, 1984. The Appellant has also applied for the local and State permits necessary to construct and operate the marine terminal, the storage and treatment facilities, and interconnecting pipelines included in Option B. Admin. Record, Appellant's Supporting Statement, pp. 322-324. Under California law, decisions on the local and State permits must be made no later than one year from the date of application, in this case, by April, 1984. The results of the joint EIR/EIS, and local and State decisions on the permits required for the "onshore" portion of Option B, will help me to determine whether Option B is a "reasonable alternative available" to the Appellant. Therefore, a short period during which further consideration of the appeal is delayed pending the completion of the final EIR/EIS and action by the State and County on Exxon's permit applications is justified.

In addition to development Option B proposed by the Appellant and under review by the County and State, the Commission has identified, as an alternative to the expanded use of the OS&T, the construction and operation of an onshore pipeline as "the preferred method of transportation," if feasible, pursuant to its policy expressed in Section 30232 of the California Coastal Act "requiring protection of the marine environment from any spilling of crude oil, gas petroleum products, or other hazardous substances." Admin. Record, Commission's Preliminary Staff Recommendations, pp. 82-85, 121-125; Commission's Revised Findings, pp. 87-90, 127-131; and Commission's Response, pp. 22-24. The Commission's preference for an onshore pipeline rather than tankers to transport SYU oil to refineries is based on its view that onshore pipelines have less adverse effects on the coastal environment than tankers, and, therefore, if its construction and operation are feasible, an onshore pipeline is the preferred alternative. Admin. Record, Commission's Preliminary Staff Recommendations, p. 82; and Commission's Revised Findings, p. 87. In determining the feasibility of the construction and operation of the onshore pipeline, the Commission has indicated that it will rely heavily upon the pipeline feasibility study being prepared by the County of Santa Barbara. Admin. Record, Commission's Consistency Certification and Preliminary Staff Recommendation, p. 123; Commission's Revised Findings, p. 130. The Commission has stated that, if the pipeline is infeasible, "a second alternative would be development of a consolidated marine terminal." Admin. Record, Commission's Preliminary Staff Recommendations, p. 121; Commission's Revised Findings, p. 128.

The Appellant has stated that it is not opposed to transportation of oil by pipeline if that method is economically efficient. Admin. Record. Applicant's Supporting Statement, p. 339. However, the Appellant has argued that it lacks the refining capacity at its Benicia, California facility to process the heavy, "sour" SYU crude oil, but has the capacity at its Baytown, Texas plant to handle SYU crude; that no "west to east" pipeline exists from California to Texas, and, although feasibility studies are currently underway concerning such a pipeline, the technical and regulatory uncertainties make it impossible to predict if and when such a pipeline will be built; that a "west to east" pipeline is not justified for SYU oil alone; and that proposals to build a joint crude upgrade facility to allow existing refineries in California to complete the processing of SYU oil have not resolved the "economic, timing, technical and environmental/permitting issues" associated with a crude upgrader facility. Admin. Record, Appellant's Supporting Statement, pp. 339-353.

Appellant also questions whether the CCMP incorporates an enforceable coastal management policy requiring the use of onshore oil pipelines rather than tankers to transport OCS oil, and argues that such a policy, if part of the CCMP, is unconstitutional under the Supremacy Clause of the United States Constitution. Admin. Record, Appellant's Supporting Statement, pp. 354-371. The Commission argues to the contrary that its policies do not require crude oil transportation by pipeline, but that, because pipelines have fewer adverse environmental impacts, pipelines are "preferable" to tankers whenever their use is "feasible." Admin. Record, Commission's Response, p. 22.

The Commission also notes that the issue of feasibility of an onshore oil pipeline "is not before the Secretary on appeal because it relates to the interpretation of the CCMP and is not one of the stated grounds for an override contained in the regulations." Admin. Record, Commission's Response, p. 23. However, I find that the issue of feasibility of an onshore pipeline is also a necessary aspect of the pipeline's reasonableness as an alternative to the expanded use of the OS&T and that the issue may be considered on appeal.

The Commission and the County have not yet determined the feasibility of an onshore pipeline. I have already concluded that a brief delay in the consideration of this appeal is appropriate to allow the permitting process with regard to the "onshore" portion of development Option B to be concluded. A brief delay also will allow time for the County and State to complete their review of the pipeline feasibility issue. The County's study is scheduled for completion by April, 1984. Admin. Record, Commission's Response, pp. 6-7; Joint Comments of the City of Santa Barbara and the County of Santa Barbara, September 27, 1983, pp. 14-15.

Ground II: National Security

The second statutory ground (Ground II) for sustaining an apeal requires that the Secretary find that an activity is "necessary in the interest of national security". To make this finding, the Secretary must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." The Secretary must seek and accord considerable weight to the views of the Department of Defense and other Federal agencies in determining the national security interests involved in a project, although he is not bound by them (supra, pp. 5-6). 15 CFR 930.122.

The Appellant contends that there are national defense and security interests in the production of domestic energy resources, a healthy United States economy and the maintenance of a strong U.S. merchant marine fleet. The Appellant argues that these interests would be significantly impaired if the SYU development were not permitted to go forward as proposed. Admin. Record, Appellant's Supporting Statement, pp. 55-65; Appellant's Statement in Response, pp. I-1, 5 and 6.

The Appellant describes the SYU as one of the largest undeveloped oil and gas reserves in the continental United States, estimated to contain between 300 to 400 million barrels of crude oil and between 600 to 700 billion cubic feet of natural gas, and contends that the development of SYU reserves would reduce U.S. dependence on oil imports with a consequent reduction in U.S. vulnerability to supply disruption. Admin. Record, Appellant's Supporting Statement, pp. 66, 69. The Appellant argues that transporting SYU crude oil will add an estimated 400,000 deadweight tons to the U.S. merchant marine fleet, and that the additional capacity will increase its ability to transport petroleum during a supply emergency. Admin. Record, Appellant's Supporting Statement, pp. 71-72; Appellant's Statement in Response, p. I-2. In addition, the Appellant asserts that the gas produced from the SYU will reduce the need to import oil as a replacement energy source as gas production declines in the future, thereby contributing to energy self-sufficiency. Admin. Record, Appellant's Supporting Statement, pp. 69-70, 180-181. Also, the Appellant submits that SYU production is a secure source close to U.S. refining centers which would be easier to defend than foreign sources should an energy disruption be caused by military conflict. Admin. Record, Appellant's Supporting Statement, p. 69; Appellant's Statement in Response, p. I-1. The Appellant concludes that the reduced dependence on oil imports resulting from SYU production would benefit national security. Admin. Record, Appellant's Supporting Statement, p. 70.

In responding to the Appellant's position on the national defense and security implications of the proposed SYU development, the Commission concluded that the development and production of the SYU oil and gas reserves "are undeniably in the national interest ...." Admin. Record, Commission's Response to Appeal, p. 10. The Commission does not oppose the eventual production of the SYU reserves and contends that its objection to Option A does not foreclose such development. Admin. Record, Commission's Response to Appeal, p. 9; Commission's Final Response, p. 5. The Commission cites the fact that it approved the offshore portion of Option B as indicative of its concern that the SYU resources be developed, and states that the construction of these facilities can proceed while the transportation issues are resolved by the Appellant, the County and itself. Admin. Record, Commission's Response to Appeal, p. 8.

However, the Commission asserts that Option A is not necessary in the interest of national security even if the development of the SYU is necessary. Admin. Record, Commission's Response to Appeal, p. 8. The Commission argues that under either Option A or Option B the oil and gas resources of the SYU will be developed and contribute equally to the Federal balance of trade, domestic oil supplies, tax and royalties, and employment. Admin. Record, Commission's Response to Appeal, p. 9. The Commission contends that if a consolidated marine terminal is constructed as part of the onshore portion of Option B, the benefits to the U.S. merchant marine would be essentially the same as under Option A. Admin. Record, Commission's Response to Appeal, p. 9. In addition, the Commission argues that, because of Option B's greater oil and gas storage and treatment capacity, SYU development would occur more quickly and efficiently under Option B than under Option A. Admin. Record, Commission's Response to Appeal, p. 9; Commission's Final Response, p. 4. The Commission also asserts that the national defense and security benefits provided by an onshore pipeline could outweigh the advantages of the Appellant's tanker fleet, given the vulnerability of tanker traffic to disruption. Admin. Record, Commission's Response to Appeal, p. 9. The Commission concludes that because less environmentally damaging alternatives exist to develop the SYU which equally serve the national interest and which are consistent with the CCMP, Option A is not necessary in the interest of national security. Admin. Record, Commission's Response to Appeal, pp. 8-10; Commission's Final Response, pp. 4-5.

The regulations require that information from the Department of Defense or other interested agencies be sought to aid the review of national security issues in this appeal, and that the views of such agencies, while not binding, shall be given "considerable weight." 15 CFR 930.122. Recognizing that the activity subject to this appeal involves the development of energy resources, and considering the arguments proposed by the Appellant and the Commission, the views of the Departments of Defense, Energy, Interior, Labor, State, Transportation and Treasury were solicited concerning the national security implications of the development of the SYU oil and gas reserves. A summary of the responses by Federal agencies is set forth below:

The Department of Defense (DOD) addressed only the national defense aspects of national security, deferring to other agencies on the broader implications of SYU development on national security interests. Although qualifying its response by stating that the benefits to be derived from the development of Outer Continental Shelf resources are too general to have direct application to specific DOD objectives, the Department identified two primary defense objectives that SYU production would support - peacetime military readiness and "warfighting sustainability." To support these objectives, DOD encourages the development of secure sources of petroleum. In this respect, the development and production of the SYU would increase secure domestic petroleum assets and provide a greater base from which DOD could draw in an emergency.

In assessing whether these two objectives would be significantly impaired if SYU development and production were not permitted to go forward under any means, the Department described the vital role that fuel availability plays in maintaining peacetime readiness of military forces and establishing wartime sustainability for those forces:

> Simply put, without sufficient fuel the forces cannot operate -- in peace or war. For the foreseeable future, the fuel that DOD must depend on is liquid hydrocarbon fuel from traditional sources. Key weapon systems in the inventory and on the drawing boards are designed to operate on liquid hydrocarbon fuels only. Thus it is vital that DOD have ready access to such fuel. It is evident that the most secure sources of that fuel are domestic ones. Current conventional wisdom advises that the Santa Barbara Channel is considered one of the most promising areas for increasing America's oil reserves. But it must be developed to realize that potential. The SYU project is designed to do that. In the absence of that development, America's crude oil reserves will ultimately suffer. And, to the extent that domestic reserves are diminished, military readiness and sustainability are impaired. It is a subjective call on how "significant" that impairment would be. Are there alternative potential sources that promise the equivalent of SYU and other Santa Barbara areas? Can a synthetic fuels industry be developed in time to meet DOD's liquid hydrocarbon needs in a similar time frame? Both are doubtful.
> Admin. Record, Letter from Lawrence J. Korb, Assistant Secretary of Defense (Manpower, Reserve Affairs & Logistics) to John V. Byrne, Administrator, NOAA, November 8, 1983.

The DOD concluded that Option A would directly support the identified national defense objectives, and would help maintain an oil transportation capacity in U.S. flag ships that could be used to support DOD in emergencies.

But the DOD was unable to find that either of the identified national defense objectives would be impaired if the development and production of the SYU reserves were not permitted to go forward under Option A, but were allowed to proceed under Option B. DOD concluded that strictly from a national defense perspective Options A and B have identical merits.

Comments from other Federal agencies responding to the national security interest inquiry were not restricted to national defense issues, but encompassed other elements of national security. These comments, with varying degrees of specificity, concern the contribution of SYU development and production to the national economy and the attainment of a greater degree of energy self-sufficiency.

The Treasury Department provided a general statement that the development of domestic energy resources contributes to economic activity and to lower import bills, and reduces dependence on reliable sources of supply, but could not discern the national security contribution of the Appellant's project:

> Rough calculations show the hydrocarbon production and various revenue streams generated by that [SYU] production to be relatively small and inconsequential from a national income account basis. As long as the problem is limited to one specific project, proving national security dependence is unlikely. Admin. Record, Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V.Byrne, Administrator, NOAA, October 17, 1983.

The Department of Labor, while concluding that its programs would not be affected by the oil and gas activities proposed by the Appellant, deferred to other agencies on the national security implications of the SYU development. Admin. Record, Letter from Daniel K. Benjamin, Acting Assistant Secretary, to John V. Byrne, Administrator, NOAA, November 29, 1983.

The Department of State considered the production of SYU oil and gas a significant contribution to national security by reducing dependence on foreign energy supplies and contributing to the strength of the national economy and the economy of friendly nations:

> New indigenous petroleum production is essential to national security. [W]e need to take every available action to minimize our dependence on insecure foreign energy supplies. The proposed production by Exxon at the Santa Ynez Unit is equivalent to

> more than $400 million a year in imported oil, at current prices. Development of this and similar oil fields can make a substantial contribution to strengthening our balance of payments. Such production will also reduce upward pressure on oil prices .... Mitigating oil price increases that would otherwise occur will benefit both the U.S. and our allies, allowing us to devote more of our resources to production investment and less to energy consumption than would otherwise be the case.
> Admin. Record, Letter from E. Allan Wendt, Deputy Secretary for International Energy and Resources Policy, to John V. Byrne, Administrator, NOAA, November 2, 1983.

The Department of State stated that it was not in a position to evaluate the feasibility of the particular methods for developing and producing the field, and therefore did not comment on whether it is necessary to develop the SYU oil and gas reserves by the means proposed in Option A.

The Department of Energy stated that the goal of our national energy policy is:

> an adequate supply of energy at a reasonable price. In this case "adequate" means short and long-range. It means adequate supply for emergencies. It requires reserves to be in place. In a sense "adequate" is a supply of energy sufficient to assure us energy nondependence -- that is, the ability of this nation to withstand an interruption of its imported supplies of energy without tremendous adverse impacts on our economy or national capabilities.
>
> "Reasonable" is a term which varies from user to user. For instance, residential consumers should be able to acquire energy supplies adequate to their needs, without forcing a change in life because of the price. Industrial concerns must remain competitive in domestic and international markets, and not be forced from the markets by the cost of energy.
> Admin. Record, Letter from Jan W. Mares, Assistant Secretary for Fossil Energy, to John V. Byrne, Administrator, NOAA, November 3, 1983.

The Department of Energy indicated that achieving this goal will improve our national security, and, therefore, that the production of SYU oil and gas reserves is necessary in the interests of national security and national defense. In order to maintain the current ratio of domestic crude production to imports, the Department of Energy stated that about 90 percent of domestic crude production in the year 2010 will have to come from reserves not yet identified, and that the Nation's oil reserves must be continually replenished through new discoveries and development of existing fields such as those represented by the SYU.

In commenting on the adverse effects likely to result from a failure to produce the SYU reserves the Department of Energy stated:

> Increasing imports to some higher level would have national security and defense implications. Although there is no consensus as to what level of imports is too much, being forced to tap higher cost domestic resources has at least two types of potentially major adverse implications. First, forcing people to pay more for the same item eliminates money that could be used to stimulate the economy. This in turn lowers tax revenues, puts pressure on funds for national security and defense purposes, and ultimately results in less money being available that would otherwise give greater prosperity. Second, having to extract oil from higher cost resources, in many cases, implies longer lead times than those associated with less expensive oil. This is because the more expensive oil is typically more difficult to access because of geological and/or climatological factors. If there were a prolonged import disruption that created a need to significantly boost domestic production in as short a period as possible, being forced to the more expensive part of the domestic resource could make this very difficult.
>
> Id.

The Department of Energy concluded that any delay in approving the SYU DPP could adversely affect our national security and defense interests, and stated that "the existing SYU production, and the additional production that would result from approval of Option A, is very much in the interest of national security and defense." However, the Department of Energy considered it immaterial, insofar as these interests are concerned, whether Option A or Option B is followed, as long as the crude oil can find ready access to a refinery.

After deferring to the Department of Defense concerning an overall assessment of the national defense and national security interests involved in the development of the SYU oil and gas reserves, the Department of Transportation (DOT) indicated that the estimated recovery from the SYU of 300-400 million barrels of oil and 600-700 billion standard cubic feet of gas would increase domestic production and reduce our reliance on unstable sources of imported oil, thereby enhancing national security. DOT concluded that the national defense interest would be enhanced under Option A by the addition of 400,000 deadweight tons to the U.S. merchant fleet which could be used to transport military fuels in war or national emergencies. The DOT indicated that Option B would also have national security and defense benefits, but stated that it was unable to compare the two options with respect to their national defense benefits. Admin. Record, Letter from Elizabeth Hansford Dole, Secretary of Transportation, to John V. Byrne, Administrator, NOAA, November 28, 1983.

In commenting on the national defense and national security interests associated with SYU production, the Department of the Interior specifically addressed the importance of Option A, but noted that the national defense and national security interests to be served under Option B are similar to those under Option A. As an indication of the connection between the Nation's energy program and national defense, the Department of the Interior referenced a July 1, 1983 memorandum of understanding between the Secretary of the Interior and the Secretary of Defense, which reads in pertinent part:

> The Department of Defense (DOD) and the Department of the Interior (DOI) fully support the national goal of exploration and development of our nation's offshore oil and gas resources. The DOD recognizes that the OCS licensing program of the Department of the Interior is an integral part of the nation's energy security program to develop domestic oil and gas resources and thus is important to national defense.
> Admin. Record, Memorandum of Agreement Between the Department of Defense and the Department of the Interior on Mutual Concerns on the Outer Continental Shelf, Statement on behalf of the Minerals Management Service, Transcript of Public Hearing, October 4, 1983, p. 57.

Interior described the SYU as the largest undeveloped oil and gas reserve in the continental United States and concluded that developing reserves of this magnitude will significantly improve both national defense and national security. This conclusion is based on Interior's finding that the SYU production, secure from foreign economic, military or political interruption, will help attain a greater degree of energy self-sufficiency, strengthen military readiness, substantially reduce the need to deplete the oil supplies of the Strategic Petroleum Reserves, and substantially increase our country's capacity to refine lower grades of crude oil - the type of oil likely to be available in times of interrupted hydrocarbon imports. Also, Interior considers the continued and expanded use of U.S. tankers for transporting SYU crude a substantial and significant contribution to both national security and national defense, by increasing the carrying capacity of the U.S. merchant marine fleet which would be available to transport petroleum during an emergency. Interior also agrees with the Appellant's assessment of the economic benefits to be derived from development of the SYU oil and gas reserves. Admin. Record, Letter from William P. Pendley, Deputy Assistant Secretary for Energy and Minerals, to John V. Byrne, Administrator, NOAA, November 3, 1983.

The MMS, the agency within the Department of the Interior responsible for leasing and managing the nation's offshore lands for mineral development, has on two separate occasions provided comments regarding the national defense or national security interests associated with the Appellant's proposed activity. These comments are consistent with Interior's position stated above. Admin. Record, Letter from Reid T. Stone, Regional Manager, to Peter L. Tweedt, Director, OCRM, NOAA, August 18, 1983, and Statement on behalf of the Minerals Management Service, Transcript of Public Hearing, October 4, 1983, pp. 49-58.

The Appellant argues, as summarized earlier, that the production of SYU oil and gas reserves is in the national security interest because, among other reasons, the SYU reserves are sizable and their development will reduce dependence on foreign oil (supra, p. 19). The Commission does not dispute this argument, and, in fact, agrees that certain national security interests, including reducing dependence on foreign sources of oil, will be served by producing SYU reserves (supra, p. 20). Further, the Department of Defense has indicated two defense objectives -- military readiness and "warfighting sustainability" -- which would be supported by SYU production, and other Federal agency comments also support the Appellant's assertion that development of SYU oil and gas reserves will reduce dependence on imported oil (supra, pp. 21-26). Therefore, based on the evidence in the record, I find that the production of the SYU oil and gas reserves directly supports the national defense objectives described by the Department of Defense. However, I am delaying making any finding regarding whether these national defense or security interests would be "significantly impaired" if the Appellant is not permitted to develop the SYU reserves "as proposed" under Option A until the final EIR/EIS and the County of Santa Barbara's report on pipeline feasibility are completed and made available and until the County and the State have taken final action on Appellant's applications for the State and local permits necessary to go forward with Option B. How the State and the County act on the Appellant's applications for the permits for Option B will aid me in determining whether development of the SYU reserves could as well be attained under Option B, thereby securing the national defense or security interests related to SYU production which have been identified by the parties and Federal agencies.

Conclusion

It is evident from the legislative history of the consistency provisions of the CZMA that the Secretary should seek "to reconcile national security needs and the State [coastal] management program in the case of conflicts." S. Rept. No. 92-753, 92d Cong., 2d Sess. (1972), reprinted in Congressional Research Service, Library of Congress, 94th Cong., 2d Sess., Legislative History of the Coastal Zone Management Act of 1972, as Amended in 1974 and 1976, at 211-211 (Comm. Print 1976).

The conflicts between developing SYU oil and gas reserves as proposed by the Appellant under Option A, and as required by the Commission to be consistent with the State program, may be resolved by developing the SYU reserves under Option B, which the Commission has already indicated may be an alternative consistent with the CCMP. Such resolution of this dispute would conform to the intent of the CZMA by requiring that national security objectives be attained by means which are consistent with a State program, if possible. However, if the Commission later finds that Option B is inconsistent with the CCMP, or if the State or County deny the permits necessary to implement Option B or impose unreasonable permit conditions, I would have to resume consideration of this appeal and find that Option B is not an alternative available to the Appellant.

Malcolm Baldrige
Secretary of Commerce

DECISION AND FINDINGS IN THE CONSISTENCY APPEAL OF EXXON COMPANY, USA TO AN OBJECTION FROM THE CALIFORNIA COASTAL COMMISSION_NOVEMBER 14, 1984

SYNOPSIS OF DECISION

Exxon Company, U.S.A. (Appellant) submitted an amended Exploration Plan to the Minerals Management Service of the Department of the Interior and to the California Coastal Commission (Commission) seeking permission to drill one exploratory well on Lease OCS P-0467 located approximately seven miles offshore Santa Barbara, California, and adjacent to three OCS tracts collectively known as the Santa Rosa Unit (SRU) and leased to the Appellant. The Appellant hopes to confirm through its exploratory drilling on Lease OCS P-0467 the existence of sufficient quantities of oil and gas to render development of its SRU reserves (estimated to be 35 million barrels of oil and 272 billion cubic feet of natural gas) economically feasible.

The Commission objected to the Appellant's proposed exploratory drilling on Lease OCS P-0467 on the ground that it would interfere with commercial fishing for thresher shark which occurs in the same area and would adversely affect coastal resources and commercial fishing facilities and activities in the coastal zone. The Commission proposed, as an alternative consistent with the California Coastal Management Program (CCMP), that the Appellant conduct its exploratory drilling outside the commercial fishing season for thresher shark during the period from Thanksgiving to May 1.

Under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 U.S.C. § 1456(c)(3)(A) and (B), and 15 CFR 930 of the Department of Commmerce's implementing regulations, the Commission's objection to the Appellant's amended Exploration Plan precludes all Federal agencies from issuing any permit or license necessary for the exploratory drilling to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved beause it "is consistent with the objectives of the [CZMA]" (Ground I) or is "otherwise necessary in the interest of national security" (Ground II) (Section 307(c)(3)(B) of the CZMA). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

On March 9, 1984, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR 930, the Appellant filed a Notice of Appeal with the Secretary of Commerce. The Secretary, upon consideration of the information submitted by the Appellant, the Commission, Federal agencies and interested persons as well as other information in the administrative record of the appeal, made the following findings required by 15 CFR 930.121 and 930.122:

Ground I

(a) The Appellant's exploratory drilling project on Lease OCS P-0467 would contribute to the national interest of attaining energy self-sufficiency and thereby furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA. (pp. 5-6.)

(b) The project's contribution to the national interest outweighs its adverse effects on the resources and land and water uses of the coastal zone. (pp. 7-11.)

(c) The project will not violate any requirements of the Clean Air Act or Clean Water Act. (pp. 12-13.)

(d) There is a reasonable alternative available to the Appellant which would permit the project to be carried out without any adverse effects on the resources and land and water uses of the coastal zone, and in a manner consistent with the CCMP. (pp. 13-15.)

Ground II

The Appellant has not met the requirements of Ground II to demonstrate that its proposed exploratory drilling of one well on Lease OCS P-0467 directly supports national defense or security interests in such a manner that these interests will be significantly impaired if the drilling cannot go forward as proposed. (pp. 15-17.)

Because the Secretary has found that the Appellant has not satisfied the requirements of the two grounds set forth in the CZMA for allowing its exploratory drilling project to proceed notwithstanding the objection by the Commission, the Appellant's project, as proposed, may not be permitted by Federal agencies. (pp. 15, 18.)

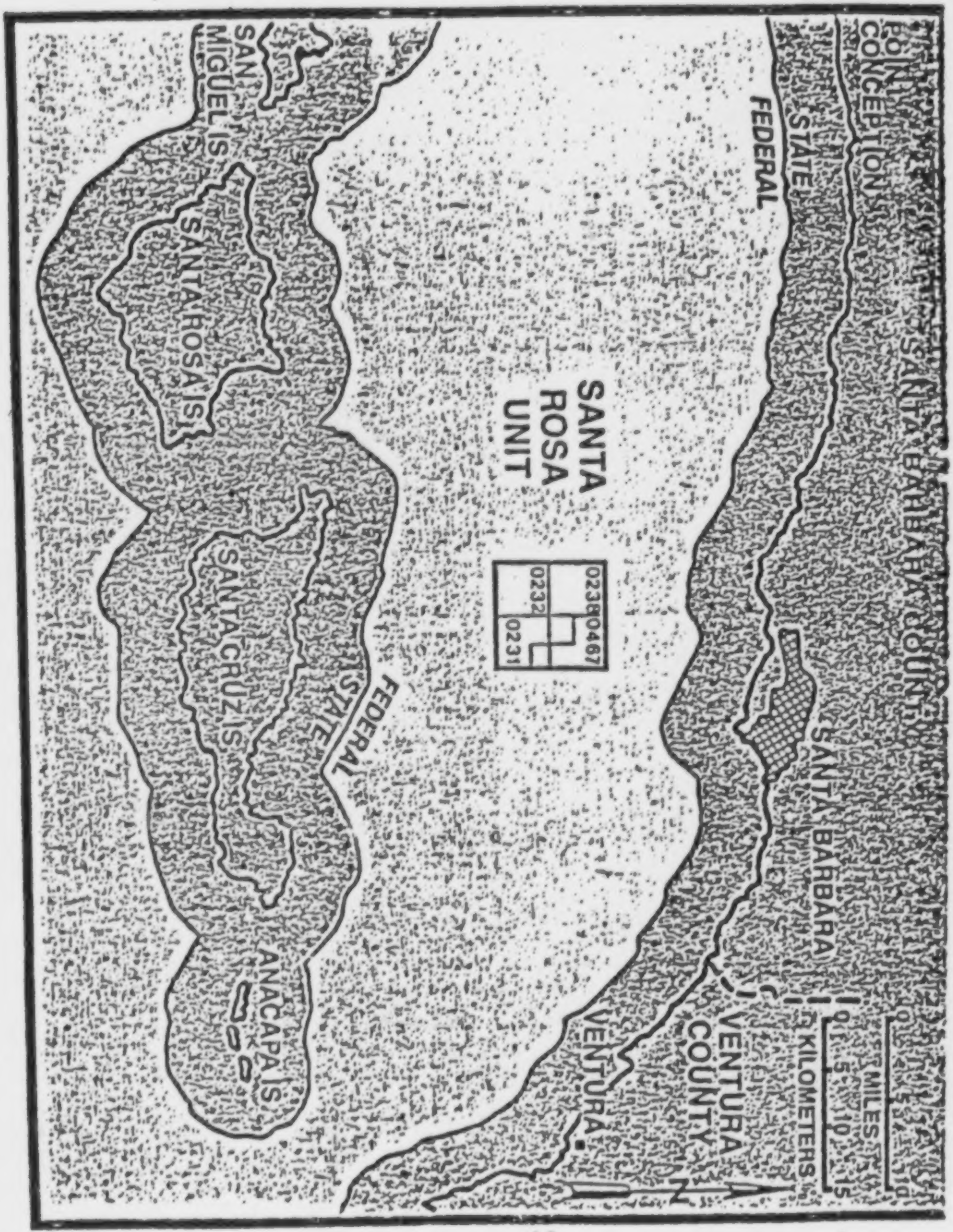
Factual Background

Appellant's Exploration Plan

Outer Continental Shelf (OCS) Lease P-0467 offshore Southern California was acquired by the Sun Exploration and Production Company and Koch Exploration Company (lessees) on June 11, 1982. On February 4, 1983, Exxon Company, U.S.A. (Appellant), as the lessees' designated operator of the southwest one-quarter of Lease OCS P-0467, submitted its original Exploration Plan (Plan) and Environmental Report to the Minerals Management Service (MMS) of the Department of the Interior (Interior), seeking approval to drill up to three exploratory wells (wells A, B and C) on Lease OCS P-0467. Administrative Record, Appellant's Supporting Statement 2, 9 [all references hereinafter are to the Administrative Record]. Lease OCS P-0467 lies approximately seven miles south-southwest of Santa Barbara, California, and is adjacent to three OCS lease tracts (Leases OCS P-0231, 0231 and 0238) "unitized" under the Outer Continental Shelf Lands Act (OCSLA) to form the Santa Rosa Unit (SRU), of which the Appellant is the sole lessee and operator. Id. at 2-3. See Figure I. Lease OCS P-0467 also is situated within the fishing area identified by the California Department of Fish and Game (DFG) as Fish Block 667, the location of a thresher shark fishery important to local fishermen. California Coastal Commission's Response 12 (May 8, 1984). See Figure II. The Appellant's major goal in conducting exploratory drilling on Lease OCS P-0467 is to confirm the existence of sufficient quantities of oil and gas to render development and production of the adjacent SRU economically feasible. Appellant's Supporting Statement 3. The Appellant estimates that the SRU reserves may be as much as 35 million barrels of oil and 272 billion cubic feet of natural gas. Id. at 52.

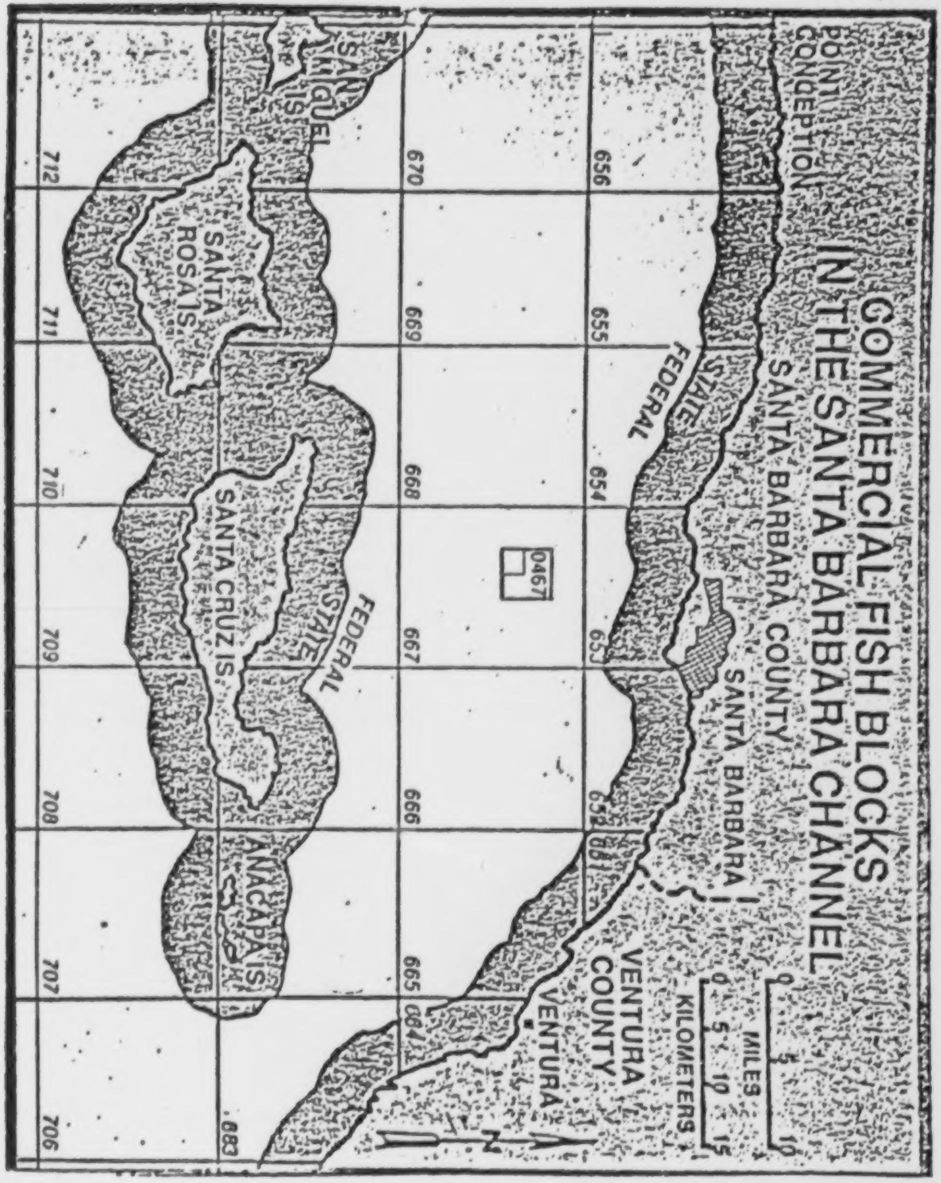
On February 14, 1983, MMS submitted the Appellant's Plan, Environmental Report and certification that the activities described in the Plan comply and would be conducted in a manner consistent with the California Coastal Management Plan (CCMP) to the California Coastal Commission (Commission) for review under Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(B). Id. at 2. On July 26, 1983, the Commission, as the Federally-approved coastal zone management agency for the State of California under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the implementing regulations of the Department of Commerce (Commerce), objected to the Appellant's consistency certification for the activities described in the Appellant's Plan for Lease OCS P-0467. Id. at 13. The Commission based its objection on its determination that the Appellant's exploratory drilling operations failed to meet the enforceable policy requirements of the California Coastal Act (Section 30000 et seq. of the California Public Resources Code) [hereinafter CCA] relating to

FIGURE I



POINT CONCEPTION
SANTA BARBARA COUNTY
STATE
FEDERAL
SANTA ROSA UNIT
0238
0467
0232
0231
SANTA BARBARA
VENTURA COUNTY
VENTURA
MILES 0 5 10 15
KILOMETERS 0 5 10 15
N
SAN MIGUEL IS
SANTA ROSA IS
SANTA CRUZ IS
ANACAPA IS
STATE
FEDERAL

FIGURE II


COMMERCIAL FISH BLOCKS
IN THE SANTA BARBARA CHANNEL
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SANTA BARBARA
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VENTURA COUNTY
VENTURA
STATE
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the protection of marine resources and commercial fishing facilities and activities in the coastal zone. Commission's Findings 2-11 (Aug. 16, 1983) [hereinafter Commission's August 16, 1983 Findings]. Specifically, the Commission found that the Appellant's proposed exploratory drilling of three wells on Lease OCS P-0467 would conflict with the activities of fishermen engaged in the commercial thresher shark fishery if the exploratory drilling occurred during the fishing season for this species from May through December. Id. at 6-9.

The Appellant appealed the Commission's objection to the Secretary of Commerce (Secretary) on August 26, 1983. Subsequent to the filing of the appeal, the Appellant and the staff of the Commission discussed the issues raised by the appeal in a November, 1983 meeting conducted by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA). Appellant's Supporting Statement 17. As a result of this discussion, the Appellant and the staff of the Commission agreed to the following:

> (a) Exxon will submit an amended POE [Plan of Exploration] to the Minerals Management Service for all three wells . . . ;
>
> (b) CCC staff will recommend to the CCC, at its December 15, 1983 meeting, that it approve the portion of the amended POE relating to the first of the three wells (well "A" as shown on the appeal documents);
>
> (c) Exxon will suspend action on its pending lawsuit arising from the CCC's objection to its previous POE, and Exxon will withdraw its appeal to the Secretary of Commerce;
>
> (d) Exxon will withdraw the pending lawsuit [challenging the Commission's consistency decision] entirely if well "A" drilling is approved by the CCC at its December 15, 1983 meeting, and will so advise the CCC in writing in advance of the December 15 meeting; and
>
> (e) CCC staff will recommend that CCC act on the remaining portions of the amended POE, regarding drilling of wells designated "B" and "C", at or before the CCC meeting scheduled for February 7-10, 1984.
>
> Commission's Response at Exhibit 4 (May 8, 1984), Letter from Director, OCRM, to Executive Director, Commission (Dec. 2, 1983).

On December 15, 1983, the Commission concurred in the Appellant's consistency certification for the drilling of well A on Lease OCS P-0467 before the beginning of the thresher shark fishing season on May 1, 1984. Commission's Findings 2 (Dec. 15, 1983). The following mitigation measures also were agreed to by the Appellant:

> 1. removal of anchor buoys to reduce the area in conflict with the [fishermen];
>
> 2. minimization of support boat traffic during night-time fishing operations;
>
> 3. routing of support boat traffic to minimize interference with fishing operations;
>
> 4. coordinating operations with other operators for a maximum of two widely-spaced rigs in the area at any one time; [and]
>
> 5. notification of fishing interests of the well spud date, and the location of the rig, anchors, and anchor lines.
>
> Id. at 2-3.

The Appellant's appeal of the Commission's July 27, 1983 objection was dismissed by the Secretary on December 14, 1983, at the request of the Appellant (49 Fed. Reg. 2004 (1984)).

On February 8, 1984, the Commission objected for the second time to the Appellant's consistency certification of its proposal to drill wells B and C on Lease OCS P-0467 as described in its amended Plan. Commission's Findings 2 (Feb. 8, 1984) [hereinafter Commission's February 8, 1984 Findings]. The Commission based its objection on the same grounds stated in its August 16, 1983 Findings (supra, p. 2).

Under Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930.131, the Commission's consistency objection precludes all Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity as described in its amended Plan to proceed, unless the Secretary determines that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

Appeal to the Secretary of Commerce

On March 9, 1984, the Appellant filed with the Secretary a Notice of Appeal together with supporting information requesting that the Secretary find that the activities described in the Appellant's amended Plan are consistent with the objectives or purposes of the CZMA or are otherwise necessary in the interest of national security. The Secretary has reserved the authority to decide such appeals. Department Organization Order 25-5A, Section 3.01(w).

Commerce published a public notice of the appeal in the Federal Register (49 Fed. Reg. 11699 (1984)) and in a local newspaper in Santa Barbara, California. Following the Appellant's original appeal in this matter on August 26, 1983, a public hearing was held in Santa Barbara, California on November 8, 1983. Comments on whether, how and to what extent the activities proposed in Appellant's amended Plan would contribute to the national interest including the national security interest were requested and received from the Departments of Defense, State, the Interior, Treasury, Labor, Transportation, Energy, and the Federal Energy Regulatory Commission. Additional comments and information have been received from the Appellant, the Commission (including the record of Appellant's proceedings before it), the Environmental Protection Agency and the Department of the Interior. All comments and information received by Commerce during the course of this appeal and the original appeal in this matter filed by the Appellant on August 26, 1983, have been included in the Administrative Record.

I find that this appeal is properly under consideration and that the parties - the Appellant and the Commission - have complied with Commerce's regulations governing the conduct of this appeal (Subparts E and H of 15 CFR Part 930).

Grounds for Sustaining an Appeal

Subparagraphs A and B of Section 307(c)(3) of the CZMA provide that Federal licenses or permits for activities described in an OCS exploration or development plan may not be granted until either the State concurs in the consistency of such activities with its Federally-approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or I find, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that each activity described in detail in such plan is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. Appellant has pleaded both grounds. Appellant's Supporting Statement xii-xxi.

The regulations interpreting these two statutory grounds for allowing Federal approval despite a State's consistency objection are found at 15 CFR 930.121 ("consistent with the objectives or purposes of the act") and 930.122 ("necessary in the interest of national security") and are set forth in full below:

> The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:
>
> (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,

> (b) When performed separately or when its cumulative effects are considered it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,
>
> (c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and
>
> (d) There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.
>
> 15 CFR 930.121.
>
> The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.
>
> 15 CFR 930.122.

The regulations governing my consideration of an appeal provide:

> [T]he Secretary shall find that a proposed Federal license or permit activity . . . is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.
>
> 15 CFR 930.130.

Ground I: Consistent with Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, I must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, I must find that:

> The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 or the [CZMA].
>
> 15 CFR 930.121(a).

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which may be generally stated as follows:

> 1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a), (b),(c),(d),(e),(f),(g), and (i); and Section 303(1));
>
> 2. To develop the resources of the coastal zone (Section 302(a),(b) and (i); and Section 303(1)); and
>
> 3. To encourage and assist the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources, in recognition by the Congress that State action is the "key" to more effective protection and use of the resources of the coastal zone (Section 302(h) and (i); and Section 303(2)).

As I have stated in an earlier appeal, OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. Further, because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 18, 1984); 49 Fed. Reg. 8274 (March 6, 1984) [hereinafter Exxon February 18, 1984 Decision].

Appellant's amended Plan involves the search for oil and gas from an area offshore California. As stated above, the exploration, development and production of offshore oil and gas resources and a consideration of the effects of such activities on the resources and land or water uses of the coastal zone are among the objectives of the CZMA when such activities require Federal permits. Because the record shows that Appellant's amended Plan falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA, I find that the Appellant's project satisfies the first element of Ground I.

Second Element

To satisfy the second element of Ground I, I must find that:

> When performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.
>
> 15 CFR 930.121(b).

This element requires that I weigh the adverse effects of the objected-to activity against its contribution to the national interest. The Commission argues that the effects considered under this element of Ground I include the effects of the Appellant's proposed exploratory drilling on the resources and land and water uses of the coastal zone. Commission's Response 5-11 (May 8, 1984). The Appellant maintains that this element comprises only the effects of its proposed activity on the "natural resources" of the coastal zone. Appellant's Supporting Statement 30-32. In order to determine the scope of what should be considered in my weighing, I have examined Section 307(c)(3) of the CZMA, from which the second element of Ground I derives. Section 307(c)(3)(B) of the CZMA states, in pertinent part:

> After the management program of any coastal state has been approved by the Secretary under Section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, *any area* which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and *affecting any land or water use in the coastal zone of such state*, attach to such plan a certification that *each activity* which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program (emphasis added).

Subsections (10) and (18) of Section 304 of the CZMA define the terms "land use" and "water use" broadly as follows:

> (10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone . . . .
>
> (18) The term "water use" means activities which are conducted in or on the water . . . .

Therefore, in order to accord full effect to the statutory provisions quoted above, I will consider the adverse effects of the activity on coastal resources and land and water uses, as defined by the CZMA, in performing the weighing required by this element.

Adverse Effects

The Commission's objection to the Appellant's proposed exploratory drilling on Lease OCS P-0467 is based primarily on the effects of such drilling on commercial fishing facilities located in the coastal zone. Commission's February 8, 1984 Findings 2-4; Commission's Response at Exhibit 6 (May 8, 1984), Letter from Deputy Director, Commission, to Manager, Exploration Department, Exxon Company, U.S.C. (Feb. 16, 1984). The Commission has identified such facilities as hoists, ice machine and diesel operations, processing plants, pier uses, and haul-out facilities as commercial fishing facilities that may be affected due to Appellant's activities. Commission's Response 6 (May 8, 1984). The Commission argues that, because the Appellant's proposed exploratory drilling on Lease OCS P-0467 will interfere with the commercial thresher shark fishery located in Fish Block 667, commercial fishing facilities in the coastal zone will necessarily be adversely affected and, therefore, such facilities will not be protected in compliance with Section 30234 of the CCA, requiring that "[f]acilities serving the commercial fishing and recreational boating industry shall be protected, and where feasible, upgraded." Id. at 5-8. The Commission also argues that the proposed exploratory drilling, considered in the context of other OCS exploratory and development activities occurring in the vicinity of the Appellant's project, will cumulatively and adversely affect such coastal land and water uses. Id. at 18-22.

The Appellant maintains that the effects of its proposed exploratory drilling on the thresher shark fishery are "commercial" and "economic" in nature and that such drilling does not affect "land or water uses" of the coastal zone. Appellant argues that protection of OCS commercial fishing activities from space conflicts with other OCS activities is not a proper use of consistency because it does not affect a land use or water use in the coastal zone but only has a "perceived economic impact." Appellant's Supporting Statement 130. Appellant states that the sole responsibility for resolving OCS oil and gas and fishing conflicts rests with the Secretary of the Interior. Id. at 131.

The Commission maintains that the Appellant's proposed exploratory drilling activities on Lease OCS P-0467 would disrupt fishing for thresher shark in an area of Fish Block 667 which the Commission describes as a valuable fishing ground for this species. The Commission states, quoting a local fisherman, that the Appellant's drilling operations:

> lie directly in the #1 and #2 shark drift net fishing area in the Santa Barbara Channel. This area is called "the finger", as denoted by the shape of the 100 fathom curve on navigational charts.
> Commission's Response 12 (May 8, 1984).

The Commission has provided fishing data prepared by the DFG indicating that Fish Block 667 ranked in the top 10 percent of the 352 fish blocks reporting thresher shark catches for the period 1981-1983. In 1982, according to the Commission, Fish Block 667 recorded the third highest catch of thresher shark among these fish blocks. Id. at 12-14.

Testimony by local fishermen in the public hearing held in Santa Barbara, California, on November 8, 1983, indicates that the thresher shark fishery found in "the finger" area of Fish Block 667 is an important and valuable fishing ground, because of the phenomenon of upwelling currents which occurs there, attracting anchovies upon which the thresher shark feeds. These fishermen estimate the thresher shark catch from this area to contribute between 10 to 30 percent of the gross income of members of the Pacific California Federation of Fishermen's Association. Transcript of November 8, 1983 Hearing 66, 141-144. Other estimates of the percentage of gross income attributable to Fish Block 667 by local fishermen testifying at the hearing are 20 to 30 percent (Id. at 71) and 25 to 40 percent (Id. at 110).

The Appellant has provided thresher shark catch statistics for Fish Block 667 for the period 1981-1983, and although the parties agree on the number of sharks reported to be caught during this period, they disagree about the significance of the statistics. The Appellant states that in 1982 thresher sharks reported caught on Fish Block 667 represented 4.4 percent of the total Southern California catch, and were worth approximately $100,000. Smaller percentages and values are indicated for 1981 and 1983. Appellant's Supporting Statement 104. According to testimony at the public hearing by an expert consultant to the Appellant, the system of reporting catch statistics by species and fish blocks was initiated by the DFG in 1981. Thresher shark statistics have varied considerably during the past three years, but the fishery is expanding rapidly and may be moving to the north. The consultant notes that the thresher shark fishery in the Santa Barbara Channel may be of relatively less significance when compared to other fishing areas north of Point Conception, California. The consultant concludes that the Appellant's proposed exploration drilling cannot seriously affect the California commercial fishing industry because the thresher shark fishery itself accounts for a relatively small percentage of the total economic value of the entire State's commercial fishery. Transcript of November 8, 1983 Hearing 19-20.

The information provided by the Commission indicates that although the thresher shark fishery found in "the finger" area of Fish

Block 667 is important to local fishermen and accounts for a significant part of their gross income, the thresher shark fishery is a relatively small part of the State's commercial fishery. The record indicates that Appellant's proposed drilling will interfere with the thresher shark fishery on Fish Block 667. However, the economic consequences to the State's commercial fishery of a lower catch of thresher shark caused by this interference cannot be considered substantial, although the economic effects on local fishermen may be serious. Although the Commission has identified certain commercial fishing facilities and activities in the coastal zone associated with this fishery that may be adversely affected by the Appellant's exploratory drilling on Fish Block 667, the record does not indicate in what manner and to what degree such effects on land and water uses in the coastal zone will be felt. Such effects, including cumulative effects, will be limited by the relatively small economic value of the thresher shark fishery on Fish Block 667 and, therefore, I find that these effects are not substantial.

The Commission found that the air and water quality effects of Appellant's proposed exploratory drilling are mitigated to the maximum extent feasible, and to this extent that the proposed drilling is consistent with the CCMP. The Commission made no further findings regarding the effects of the Appellant's proposed drilling on the resources and land and water uses of the coastal zone. Commission's February 8, 1984 Findings 4.

Contribution to the National Interest

Commerce regulations indicate that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by Federal agencies. 15 CFR Part 923, 44 Fed. Reg. 18608 (1979). Commerce sought the views of certain Federal agencies concerning the national interest in the Appellant's proposed exploratory drilling on Lease OCS P-0467. The views expressed by Federal agencies regarding the national interest in this project are summarized below:

The Department of Treasury commented that "although the benefits of an individual project are difficult to quantify, the effects even if small are favorable." The Department believes that the Appellant's exploratory activities could be economically beneficial because the purpose is to delineate the reservoir characteristics of a known deposit. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (April 27, 1984).

The Department of the Interior stated that the proposed exploration project would contribute substantially to the national interest by furthering the goal of attaining energy self-sufficiency. Letter from Garrey E. Carruthers, Assistant Secretary for Land and

Minerals Management, to John V. Byrne, Administrator, NOAA (June 6, 1984).

The Department of Labor commented that while the overall employment effects of more and cheaper oil are desirable, the Appellant's exploratory activity primarily will provide information about the quantity of oil available and provide information to assess trade-offs between economic and environmental impacts. Letter from Daniel K. Benjamin, Acting Assistant Secretary for Policy, to John V. Byrne, Administrator, NOAA (May 31, 1984).

The Department of Transportation commented that there would be no conflict between the Appellant's proposed exploration site and the national interest in navigational safety and that development of the SRU would contribute to the national interest by creating employment opportunities, improving the U.S. balance of trade and by increasing Federal, State and local tax revenues. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (May 23, 1984).

The Federal Energy Regulatory Commission commented that "prudent management of the already identified Santa Rosa resources, as well as other non-replenishable domestic energy resources contribute in a very direct sense to the overall national interest." The Commission noted that although the United States is currently experiencing a surplus of certain forms of energy, further exploration and development of domestic oil and gas resources is consistent with the long-term national interest, and that development of the SRU would be consistent with national energy considerations. Letter from Kenneth A. Williams, Director, Office of Pipeline and Producer Regulation, to John V. Byrne, Administrator, NOAA (May 17, 1984).

The Appellant maintains that its exploratory drilling on Lease OCS P-0467 serves the national interest expressed in the CZMA and the OCSLA in attaining energy self-sufficiency. Appellant's Supporting Statement 45-52. The Appellant states that the primary purpose of its exploratory drilling operations on Lease OCS P-0467 is to confirm the existence of oil and gas reserves in sufficient quantity to justify commercial development of the adjacent SRU. The Appellant estimates that such SRU reserves may be as much as 35 million barrels of oil and 272 billion cubic feet of natural gas. Id. at 54-57.

Based on the information in the record, I find that Appellant's exploratory drilling on Lease OCS P-0467 will contribute to the national interest in attaining energy self-sufficiency. Although I cannot determine exactly the value of this contribution to the national interest, I find that it is sufficient to outweigh the relatively insubstantial adverse effects that will be caused by the Appellant's proposed drilling on the resources and land and water uses of the coastal zone.

Third Element

To satisfy the third element of Ground I, I must find that:

> The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.
>
> 15 CFR 930.121(c).

The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated in all State coastal programs approved under the CZMA. Section 307(f) of the CZMA.

The Clean Water Act

The Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended (the Clean Water Act), provides that the discharge of pollutants is unlawful except in accordance with a National Pollution Discharge Elimination System (NPDES) permit issued by the Administrator of the Environmental Protection Agency (EPA). Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342.

The general NPDES permit covering discharges from oil and gas facilities operating on OCS P-0467, including the disposal of drill muds and cuttings, expired on June 30, 1984. EPA is developing a new general NPDES permit incorporating effluent limitations reflecting the Best Available Technology Economically Achievable which, according to EPA, should be at least as stringent as the earlier permit. EPA commented that the Commission does not claim violations of the Clean Water Act as grounds for its consistency objection and declined further comment on this issue. Letter from Josephine S. Cooper, Assistant Administrator for External Affairs, EPA, to John V. Byrne, Administrator, NOAA (June 5, 1984). EPA has stated, in the context of another appeal, that oil and gas exploratory operations on the OCS must comply with the Clean Water Act, provided that the terms and conditions of the new general NPDES permit are met. Letter from William D. Ruckelshaus, Administrator, EPA, to John V. Byrne, Administrator, NOAA (April 24, 1984).

The Commission has found that Appellant's agreement to dispose of drill muds and cuttings as required by the Commission represents the maximum feasible mitigation under State law, and, therefore, with regard to the disposal of drill muds and cuttings, that the proposed project is consistent with section 30260 of the CCA. Commission's February 8, 1984 Findings 4.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting the terms and conditions of the new NPDES permit, I find that the Appellant's proposed activity will not violate the requirements of the Clean Water Act.

The Clean Air Act

The Clean Air Act, 42 U.S.C. §7401 et seq., directs the Administrator of EPA to prescribe national ambient air quality standards for air pollutants to protect the public health and welfare. EPA noted that the Commission does not claim violations of the Clean Air Act as a basis for its consistency objection and declined further comment. Letter from Josephine S. Cooper to John V. Byrne, supra. Interior commented that Appellant's project will be conducted in compliance with the Clean Air Act. Letter from Garrey E. Carruthers, Assistant Secretary for Land and Minerals Management, Interior, to John V. Byrne, Administrator, NOAA (May 30, 1984). The Commission found that Appellant's project mitigates air quality impacts to the maximum extent feasible, and, therefore, is consistent with Section 30260 of the CCA. Commission's February 8, 1984 Findings 4.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting all relevant standards of the Clean Air Act, I find that the Appellant's proposed activity will not violate any requirement of the Clean Air Act.

Fourth Element

To satisfy the fourth element of Ground I, I must find that:

> There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal zone] management program.
>
> 15 CFR 930.121(d).

The Commission has found that the Appellant's proposed drilling of two exploratory wells on Lease OCS P-0467 within Fish Block 667 is inconsistent with the CCMP because such exploratory drilling will conflict with commercial fishing for thresher shark during the seven-month fishing season for this species from May to November, which, in turn, will adversely affect coastal zone fishing support facilities. The Commission has proposed that the Appellant can comply with the enforceable coastal management policies of the CCMP by limiting its exploratory drilling outside the thresher shark fishing season to the five months from Thanksgiving to May 1. Commission's February 8, 1984 Findings 2-3.

The Appellant opposes the alternative of conducting its drilling operations on Lease OCS P-0467 when such operations will not conflict with the thresher shark fishery because it argues that there are no impacts from its drilling operations on any land or water use in the coastal zone and that the CCMP contains no enforceable policies which address conflicts between OCS oil and gas activities and commercial fishing operations. Appellant's Supporting Statement 126-127. The Appellant also argues that the alternative of conducting its exploratory drilling outside the thresher shark fishing season is unreasonable because, among other reasons, the effects of the proposed exploration activities on commercial fishing operations are negligible, and the alternative is inconsistent with multiple-use concepts. Id.

The Appellant does not argue that the alternative offered by the Commission is "unavailable." Based on the information in the record, I find that the proposed alternative is available; however, to satisfy the fourth element of Ground I, I must determine that the alternative is also "reasonable."

I have stated in an earlier appeal that an alternative to an objected-to activity or project may require major changes in the "location" or "design" of the project, and that whether an alternative will be considered "reasonable" depends upon its feasibility and upon balancing the estimated increased costs of the alternative against its advantages. Exxon February 18, 1984 Decision. Balancing the costs of the alternative against its advantages requires in this case that I consider, first, how much less adverse effects on the land and water uses of the coastal zone would occur under the alternative, and second, the increased costs to the Appellant of carrying out the exploratory drilling in a manner that is consistent with the CCMP.

I have already found that the effects of the Appellant's exploratory drilling on the land or water uses of the coastal zone as a result of the interference in the thresher shark fishery on Fish Block 667 to be limited by the small economic value of this fishery relative to the value of the State's commercial fishery (supra, pp. 9-10). Therefore, the "advantage" of avoiding any interference in this fishery will be similarly limited, although the record indicates that such an "advantage" to local fishermen fishing for thresher shark on Fish Block 667 may be considerably greater (supra, p. 9).

The Appellant asserts that the alternative of drilling its exploratory well outside the fishing season for the thresher shark imposes costs as a result of modifications the Appellant must make in its drilling programs. Appellant's Supporting Statement 151. However, the record in this appeal does not indicate the magnitude of such costs, and does not provide an explanation, in the circumstances of this appeal, why exploratory drilling operations on Lease OCS P-0467 conducted outside the thresher shark fishing season, as proposed by the Commission, would involve greater costs than such operations conducted during the fishing season for this species, as proposed by the Appellant.

The record indicates that the Appellant has already drilled one exploratory well on Lease OCS P-0467 during January and February, 1984, thereby accommodating both its interest in Lease OCS P-0467 and the interest of the thresher shark fishermen in Fish

Block 667. Id. at 18-19. The current thresher shark fishing season will soon end, making available to the Appellant an opportunity during a period of five months 1/ to carry out its exploratory operations on Lease OCS P-0467 without any degree of interference with the relatively new and developing commercial thresher shark fishery, without any adverse effects on the land or water uses of the coastal zone and, for that reason, fully consistent with the policies of the CCMP. The costs to the Appellant of conducting exploratory operations on Lease OCS P-0467 outside the thresher shark fishing season have not been shown to be any greater than the costs of such operations conducted during the fishing season. Other oil companies, including Sun Oil, Chevron, Getty and Arco, have agreed to accommodate the fishing industry through limitations on their drilling activities (transcript of November 8, 1983 Hearing 36-37), which suggests to me that such restriction is not an unreasonable standard in the oil industry. Balancing the costs of the alternative proposed by the Commission against its advantages, I find that the alternative is reasonable. Because I have found that there is a reasonable alternative available to the Appellant which would permit it to conduct its exploratory drilling on Lease OCS P-0467 in a manner consistent with the CCMP, I find that the Appellant has not met the fourth element of Ground I. 2/

Conclusion for Ground I

On the basis of the findings I have made above, I find in conclusion that the Appellant has not satisfied all of the elements of Ground I, and, therefore, that the Appellant's exploratory drilling as proposed in its amended Plan is not consistent with the objectives of the CZMA.

Ground II: National Security

The second statutory ground (Ground II) for sustaining an appeal requires that I find that the activity is "necessary in the interest of national security." To make this finding, I must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed," and I must seek and accord considerable weight to the views of the Department of

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1/ According to Appellant, the drilling, testing and abandonment of Well B will require less than four months. Appellant's Supporting Statement 62.

2/ Appellant argues that such restriction during production operations is not workable, but I need not address this problem in order to reach my finding with respect to Appellant's exploratory drilling.

Defense and other Federal agencies in determining the national security interests involved in a project, although I am not bound by such views. 15 CFR 930.122.

The Appellant states that its project will further the national security interest by increasing domestic production of oil and gas, thereby reducing dependence on foreign energy sources. Appellant's Supporting Statement 52-53. Appellant estimates the SRU reserves at 35 million barrels of oil and 272 billion cubic feet of natural gas. Id. at 52. The Commission argues that the Appellant has not provided any evidence demonstrating that the failure to carry out exploratory drilling on Lease OCS P-0467 during the thresher shark fishing season will "significantly impair" the national defense or other national security interest or that the proposed project "directly supports" a national defense or security interest. Commission's Response 29-32 (May 8, 1984).

The views of the Departments of Defense, Energy, the Interior, State, Transportation and Treasury were sought concerning the national security interest served by the Appellant's proposed exploration operations on Lease OCS P-0467, and are summarized below:

The Department of Defense commented that the Appellant's exploration activities would have no adverse effect on Defense Department activities and that potential future production of petroleum resources would provide domestic energy essential to Army, Navy and Air Force activities. Letter from Jerry L. Calhoun, Principal Deputy Assistant Secretary of Defense, to John V. Byrne, Administrator, NOAA (June 12, 1984).

The Department of Energy stated that exploration for, and production of, oil and gas from the OCS plays an important role in supporting national defense and security and that continued increased oil importation would have national security and defense implications. The Department noted that the exploration of Lease OCS P-0467 is in the interest of national security and defense. Letter from William P. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (May 25, 1984).

The Department of the Interior commented that approval of the Appellant's exploration plan is necessary to develop reserves to support and improve national security and that potential SRU production would be secure from interruption. Letter from Garry E. Carruthers, Assistant Secretary for Land and Minerals Management, to John V. Byrne, Administrator, NOAA (June 6, 1984).

The Department of State commented that "most new discoveries of oil in the U.S. are in relatively small fields and that a large number of new fields such as the Exxon tract will be needed to maintain U.S. energy production levels." The Department noted that the Appellant's exploration activities could lead to domestic oil production that would contribute to national security. Letter from E. Allan Wendt, Deputy Secretary, International Energy and Resources Policy, to John V. Byrne, Administrator, NOAA (May 31, 1984).

The Department of Transportation stated that increased domestic production would enhance national security by reducing dependence on foreign oil and that the Appellant's exploration activities would support national security interests. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (May 23, 1984).

The Department of the Treasury commented that exploration and subsequent development of domestic energy sources serves the national security interest by reducing dependence on foreign energy. Letter from Manuel H. Johnson, Assistant Secretary, Economic Policy, to John V. Byrne, Administrator, NOAA (April 27, 1984).

I have found in an earlier appeal that the development of proven oil and gas reserves in the Santa Ynez Unit (SYU) of 300-400 million barrels of oil and 600-700 billion standard cubic feet of gas is necessary in the interest of national security. Exxon February 18, 1984 Decision. The issue here is whether exploratory drilling to delineate a field estimated to contain considerably less oil and gas reserves (35 million barrels of oil and 272 billion standard cubic feet of gas) than the SYU directly supports national defense or security objectives, and whether such interests will be significantly impaired if the drilling cannot go forward as proposed.

Conclusion for Ground II

Because the oil and gas reserves to be delineated by the Appellant's proposed exploratory drilling may only contain a maximum of 35 million barrels of oil and 272 billion cubic feet of gas, because neither the Appellant nor the Department of Defense identified any significant impairment to national defense or security interests that would occur if the Appellant could not conduct its exploratory drilling as proposed, and because Appellant's exploratory drilling project may be conducted during the period from Thanksgiving to May 1, thereby fulfilling any national security interests in a manner consistent with the CCMP, I find that the requirements of Ground II for sustaining an appeal have not been met. This outcome conforms to my duty to seek "to reconcile national security needs and the State [coastal] management program in the case of conflicts." S. Rept. No. 92-753, 92d Cong., 2d Sess. (1972), reprinted in Congressional Research Service, Library of Congress, 94th Cong., 2d Sess., Legislative History of the Coastal Zone Management Act of 1972, as amended in 1974 and 1976, at 211 (Comm. Print 1976).

Conclusion

Because I have found that the Appellant has not satisfied the requirements of the two grounds set forth in the CZMA for allowing its exploratory drilling project to proceed notwithstanding the objection by the Commission, the Appellant's project, as proposed, may not be permitted by Federal agencies. 15 CFR 930.131(b).

Malcolm Baldrige
Secretary of Commerce

NOV 14 1984

RECOMMENDED DECISION AND FINDINGS IN THE CONSISTENCY APPEAL OF UNION OIL COMPANY OF CALIFORNIA TO AN OBJECTION FROM THE CALIFORNIA COASTAL COMMISSION

SYNOPSIS OF DECISION

Union Oil Company of California (Appellant) submitted an amended Exploration Plan to the Minerals Management Service of the Department of the Interior and to the California Coastal Commission (Commission) seeking permission to drill two exploratory wells on OCS lease P-0203 which lies partially within the boundaries of the Santa Barbara Channel Islands National Marine Sanctuary (Sanctuary) and which is transversed by the northbound shipping lane of the Santa Barbara Channel Vessel Traffic Separation Scheme.

The Commission, California's Federally approved coastal zone management agency, objected to the Appellant's consistency certification for the amended Exploration Plan on the ground that the proposed exploratory drilling was inconsistent with the California Coastal Management Program (CCMP) because it would subject the endangered California brown pelican and its habitat on or near Anacapa Island within the Sanctuary to risk of injury from oil spills occurring during the exploratory drilling and would pose a hazard to vessel traffic safety in the Santa Barbara Channel.

Under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 U.S.C. § 1456(c)(3)(A) and (B)), and 15 CFR 930 of the Department of Commerce's implementing regulations, the Commission's objection to the Appellant's amended Exploration Plan precludes all Federal agencies from issuing any permit or license necessary for the exploratory drilling to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it "is consistent with the objectives of the [CZMA]" (Ground I) or is "otherwise necessary in the interest of national security" (Ground II) (Section 307(c)(3)(B) of the CZMA). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

On December 12, 1983, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR Part 930, the Department of Commerce's regulations governing the Secretary's review of the objected-to activity, the Appellant filed a Notice of Appeal with the Secretary of Commerce. The Secretary, upon consideration of the information submitted by the Appellant, the Commission, Federal agencies and interested persons as well as other information in the administrative record of the appeal, made the following findings pursuant to 15 CFR 930.121 and 930.122:

GROUND I

(a) Exploratory drilling on OCS P-0203 would contribute to the national interest of attaining energy self-sufficiency and thereby furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the CZMA. (pp. 7-8.)

(b) The adverse effects of the project on the natural resources of the coastal zone are not substantial enough to outweigh its contribution to the national interest. (pp. 8-20.)

(c) The project will not violate any requirements of the Clean Air Act or Clean Water Act. (pp. 21-22.)

(d) There are no reasonable alternatives available to the Appellant which would permit the project to be carried out in a manner consistent with the CCMP. (pp. 22-23.)

Ground II

The Appellant has not met the requirements of Ground II to demonstrate that its proposed exploratory drilling of two wells directly supports national defense or security interests and that such interests will be significantly impaired if the drilling cannot go forward as proposed. (pp. 23-25.)

The Secretary has found that the Appellant's appeal has met the requirements of Ground I set forth in 15 CFR 930.121, and, therefore, that the Appellant's proposed drilling of two exploratory wells on OCS P-0203, although inconsistent with the CCMP, is consistent with the objectives of the CZMA and may be permitted by Federal agencies. (pp. 23, 25.)

Factual Background

Appellant's Exploration Plan

On May 13, 1982, Union Oil Company of California (Appellant), as sole lessee and operator of Outer Continental Shelf (OCS) lease P-0203 offshore Southern California, submitted its final Exploration Plan (Plan), Environmental Report, and Safety and Oil Spill Contingency Plans to the Minerals Management Service (MMS) of the Department of the Interior (Interior) requesting approval to drill up to two exploratory wells on OCS P-0203 to evaluate potential sources of hydrocarbon resources which the Appellant estimates to contain 31 million barrels of crude oil. Administrative Record, Appellant's Supporting Statement 1-2, 7, 9, 18; Appellant's Environmental Report 6 [all references hereinafter are to the Administrative Record]. Lease OCS P-0203, which was acquired by the Appellant in 1968, is located at the eastern end of Santa Barbara Channel approximately 10 miles west of Point Mugu and 9.5 miles south of the City of Ventura, California. The lease partially lies within both the Channel Islands National Marine Sanctuary (Sanctuary), which was established in 1980 and which extends 6 nautical miles seaward around the Channel Islands National Park (Park), and the northbound lane of the Vessel Traffic Separation Scheme (VTSS) established by the U.S. Coast Guard for ships travelling north through the Santa Barbara Channel. Appellant's Environmental Report 6, 77-79, 83-84. Each side of the northbound lane is bordered by a 500 meter-wide "buffer zone."

The Appellant initially proposed drilling both exploratory wells during the period from November, 1982, through mid-January, 1983, from the same surface location on OCS P-0203 using a semi-submersible drilling vessel anchored approximately 1.4 nautical miles inside the seaward boundary of the Sanctuary and 4.8 nautical miles northeast of Anacapa Island, one of the islands that make up the Park. Appellant's Environmental Report 83-84. The proposed location for the exploratory drilling operations was 504 feet from the southern boundary of the northbound shipping lane within the adjacent buffer zone. Appellant's Exploration Plan 1; MMS, Environmental Assessment 1. See Figure 1.

Anacapa Island and nearby Scorpion Rock are the only regular breeding colonies in the United States of the California brown pelican, listed as an endangered species by the U.S. Fish and Wildlife Service (FWS). Appellant's Supporting Statement at Exhibit D, MMS Environmental Assessment, app. 1, FWS Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 7. Similarly, the State of California lists the California brown pelican as an endangered species under California law. California has designated Anacapa Island as an Ecological Reserve, and the surrounding State waters as an Area of

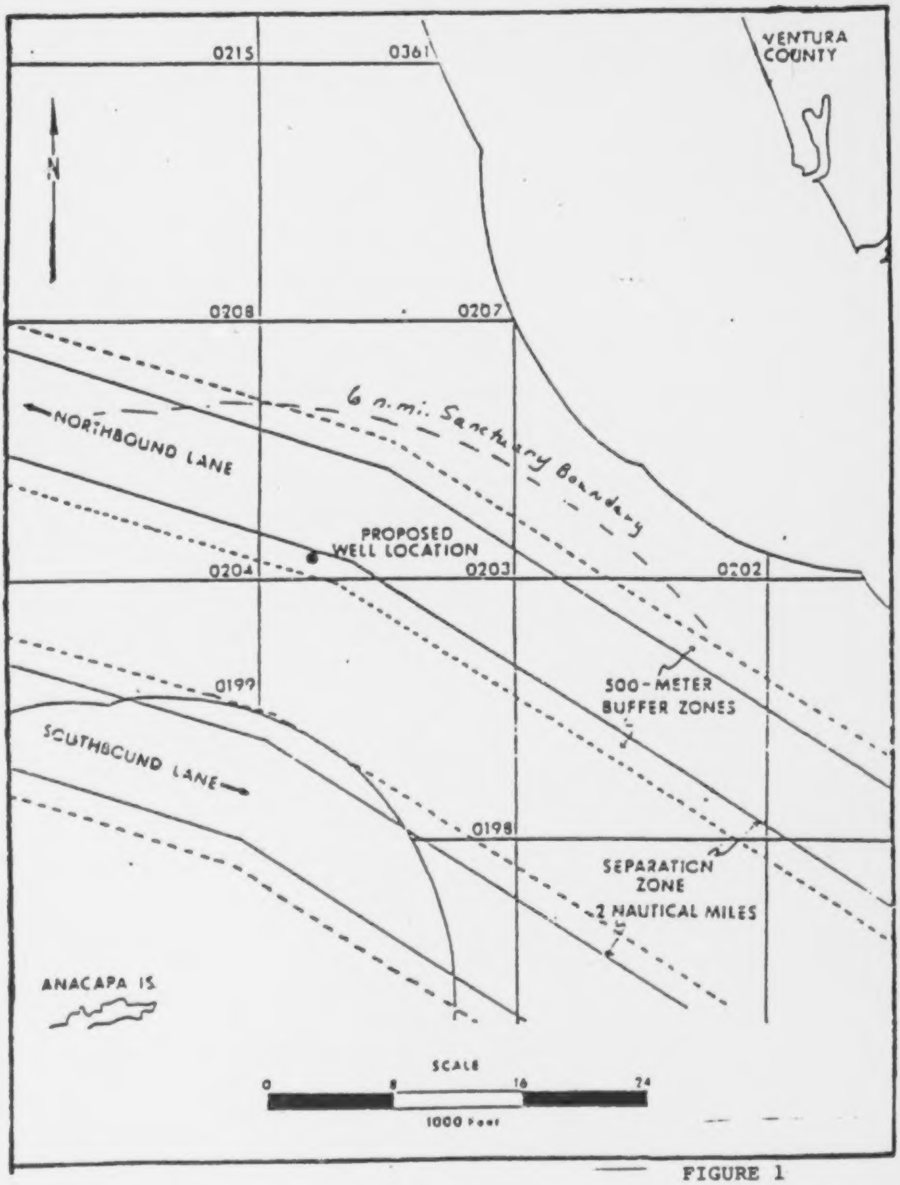
0215
0361
VENTURA COUNTY
N
0208
0207
NORTHBOUND LANE
6 n.mi. Sanctuary Boundary
PROPOSED WELL LOCATION
0204
0203
0202
0199
500-METER BUFFER ZONES
SOUTHBOUND LANE
0198
SEPARATION ZONE
2 NAUTICAL MILES
ANACAPA IS.
SCALE
0
8
16
24
1000 Feet

FIGURE 1

Special Biological Significance under State law. California Coastal Commission's Findings 3,5 (Nov. 17, 1982) [hereinafter Commission's Findings]; and Revised Findings on Consistency Certification 3,6 (Nov. 15, 1983) [hereinafter Commission's Revised Findings].

On May 17, 1982, MMS determined the Plan and accompanying documents to be officially submitted, and forwarded them, along with the Appellant's certification that the activities described in the Plan comply and would be conducted in a manner consistent with the California Coastal Management Plan (CCMP), to the California Coastal Commission (Commission) for review under Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(B). Appellant's Supporting Statement 9. On November 17, 1982, the Commission, as the Federally-approved coastal zone management agency for the State of California under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the implementing regulations of the Department of Commerce (Commerce), objected to the Appellant's consistency certification for the activities described in the Appellant's Plan for OCS P-0203. Commission's Findings 2.

The Commission determined that the Appellant's Plan did not comply with, and, therefore, was inconsistent with the policies of the Federally-approved CCMP. The Commission based its objection on its determination that the Appellant's exploratory drilling activities failed to meet the enforceable policy requirements of the California Coastal Act [Section 30000 et seq. of the California Public Resources Code] [hereinafter CCA] relating to commercial fishing, navigational safety, and protection of natural resources of the Channel Islands area, particularly the California brown pelican. Id.

The Commission's objection to the navigational safety of the Appellant's exploratory drilling was based on the drilling vessel's proximity to the VTSS, specifically its location within the buffer zone and one-half mile from the "dog leg," or bend, in the VTSS. The Commission requires that structures be located a minimum of 3 miles from the "dog leg" to ensure the safety of vessel traffic through the VTSS, and determined that the Appellant's project would be inconsistent with Section 30262 of the CCA which requires that such structures not be sited where a substantial hazard to vessel traffic might result. Further, the Commission concluded that the adverse effects on navigational safety would not be adequately mitigated by the Appellant's proposal to conduct a vessel traffic safety study similar to the one approved by the Commission in connection with exploration by Chevron, U.S.A., Inc. of nearby OCS lease P-0205, located 4 miles from the same "dog leg" turn. Id. at 11, 14.

The Commission also determined that the Appellant's proposed exploration activities are located in and would adversely affect environmentally sensitive habitat and marine areas and species of special biological or economic significance, protected by Sections 30230 and 30240(a) of the CCA. Id. In particular, the Commission determined that oil spills are the greatest threat to the endangered California brown pelican population on Anacapa Island, and that this population is vulnerable to damage from oil spills throughout the year. Id. at 7, 9.

Additionally, the Commission determined that the risk of oil spills posed by the Appellant's project, resulting from either a well blowout or a collision between the exploratory drilling rig, or its service vessels, and a vessel transiting the VTSS could not be satisfactorily mitigated to meet the provision of Section 30232 of the CCA which requires effective oil spill containment and cleanup facilities and procedures. The Commission concluded that the Appellant's Oil Spill Contingency Plan was incomplete because it lacked information on oil spill trajectories and methods and procedures for use of chemical dispersants. Id. at 9-11.

The Appellant appealed the Commission's objection to the Secretary of Commerce (Secretary) on December 17, 1982, under Subparagraphs A and B of Section 307(c)(3) of the CZMA. Commerce published a public notice of the appeal in the Federal Register (47 Fed. Reg. 58335 (1982)). Subsequent to the filing of the appeal, the staff of the Commission and the Appellant engaged in numerous discussions throughout the first nine months of 1983, mediated by representatives of the National Oceanic and Atmospheric Administration (NOAA), in an attempt to resolve the conflicts which led to the Commission's objection. Appellant's Supporting Statement 2; Commission's Response to Appeal 1-2. On October 31, 1983, at the Appellant's request, the Secretary dismissed the appeal to enable the Appellant to submit an amended Exploration Plan (hereinafter amended Plan) to the Commission for its consistency review. 48 Fed. Reg. 51949 (1983).

Appellant's Amended Exploration Plan

By letter dated September 22, 1983, the Appellant submitted its amended Plan for OCS P-0203 to the MMS and requested that it be forwarded to the Commission for consistency review. Letter from J.S. Attebery, District Land Manager, Union Oil Company of California, to William Grant, Acting Regional Manager, Pacific OCS Region, MMS (Sept. 22, 1983). As part of the amended Plan, the Appellant revised its Oil Spill Contingency Plan to provide for the use of chemical dispersants in addition to mechanical measures to contain oil spills, and to establish a process by which decisions regarding the use of chemical dispersants may be made quickly. After the discussions referenced above, the Appellant, in an effort to provide the maximum feasible mitigation for its project, proposed in its amended Plan:

> 1. To seek to develop the field proposed to be confirmed by its exploratory drilling only from a platform located outside the boundary of the Sanctuary;
>
> 2. To conduct a vessel traffic safety study similar to the study conducted in 1983 by the California Maritime Academy in conjunction with exploratory drilling by Chevron U.S.A., Inc. on OCS P-0205 in the buffer zone of the northbound VTSS lane;
>
> 3. To equip its drillship with any additional safety features recommended as a result of the vessel traffic safety study on OCS P-0205;
>
> 4. To conduct its drilling operations "in the shortest feasible time," which the Appellant estimates to involve a total time of exposure to oil bearing formations of twenty-two days for the initial drilling, and eighteen days if a redrill is necessary; and
>
> 5. To conduct a study of the marine life in the water column in the vicinity of its drilling location that might be affected by disposal of drilling muds and cuttings from its exploratory operations, and to adopt whatever measures are suggested by the study to mitigate adverse effects, including land disposal if the Commission so requires.

Appellant's Supporting Statement at Exhibit G, Transcript of November 15, 1983 Hearing 9, 14-24; Appellant's Supporting Statement 2, 14-17; Letter from J.S. Attebery to William Grant, *supra*.

On November 15, 1983, the Commission again objected to the Appellant's certification that its proposed exploration of OCS P-0203 would be consistent with the policies of the CCMP. Commission's Revised Findings 1-2. The Commission found that although the amended Plan mitigates adverse effects to the maximum extent feasible, the Appellant's mitigation measures are inadequate to reduce the risk of harm to the California brown pelican and to the safety of vessel traffic to a level acceptable to the Commission under Section 30260 of the CCA.[1] The Commission concluded that no oil exploration activity on the proposed drilling site could be adequately mitigated and that the public welfare or interest in protecting coastal resources such as the California brown pelican outweighs the public interest in energy development served by Appellant's project. Id. at 23-27.

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[1] Section 30260 of the CCA provides:

> Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Under Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930.131, the Commission's consistency objection precludes all Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity as described in the amended Plan to proceed, unless the Secretary determines that the activity may be Federally-approved because the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

Appeal to the Secretary of Commerce

On December 12, 1983, the Appellant filed with the Secretary a Notice of Appeal together with supporting information requesting that the Secretary find that the activities described in Appellant's amended Plan are consistent with the objectives or purposes of the CZMA or are otherwise necessary in the interest of national security. The Secretary has reserved the authority to decide such appeals. Department Organization Order 25-5A, Section 3.01(w).

Following receipt of Appellant's appeal and supporting information, Commerce published a public notice of the appeal in the Federal Register (48 Fed. Reg. 56818 (1983)) and in a local newspaper in Santa Barbara, California. A public hearing was held in Santa Barbara, California, on February 7, 1984. Comments on whether, how, and to what extent the activities proposed in Appellant's amended Plan would contribute to the national interest including the national security interest were requested and received from the Departments of Defense, State, the Interior, Treasury, Labor, Transportation and Energy, and the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration. Additional comments and information have been received from the Appellant, the Commission (including the record of Appellant's proceedings before it), the Environmental Protection Agency and the Department of the Interior. All comments and information received by Commerce during the course of the appeal have been included in the Administrative Record.

I find that this appeal is properly under consideration and that the parties - the Appellant and the Commission - have complied with Commerce's regulations governing the conduct of this appeal (Subparts E and H of 15 CFR Part 930).

Grounds for Sustaining an Appeal

Subparagraphs A and B of Section 307(c)(3) of the CZMA provide that Federal licenses or permits for activities described in an OCS exploration or development plan may not be granted until either the State concurs in the consistency of such activities with its Federally-approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or I find, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that each activity described in detail in such plan is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. Appellant has pleaded both grounds. Appellant's Supporting Statement 3-4.

The regulations interpreting these two statutory grounds for allowing Federal approval despite a State's consistency objection are found at 15 CFR 930.121 ("consistent with the objectives or purposes of the Act") and 930.122 ("necessary in the interest of national security"), and are set forth in full below:

> The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:
>
> (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,
>
> (b) When performed separately or when its cumulative effects are considered it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,
>
> (c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and
>
> (d) There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.
>
> 15 CFR 930.121.
>
> The term "necessary in the interest of national security" describes a Federal license or permit

> activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.
>
> 15 CFR 930.122.

The regulations governing my consideration of an appeal provide:

> [T]he Secretary shall find that a proposed Federal license or permit activity ... is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.
>
> 15 CFR 930.130.

Ground I: Consistent with the Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, I must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, I must find that:

> The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the [CZMA].
>
> 15 CFR 930.121(a).

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which may be generally stated as follows:

1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a),(b),(c),(d),(e),(f),(g), and (i); and Section 303(1));

2. To develop the resources of the coastal zone (Section 302(a),(b) and (i); and Section 303(1)); and

3. To encourage and assist the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources, in recognition by the Congress that State action is the "key" to more effective protection and use of the resources of the coastal zone (Section 302(h) and (i); and Section 303(2)).

As I have stated in an earlier appeal, OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. Further, because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 18, 1984); 49 Fed. Reg. 8274 (March 6, 1984).

Appellant's amended Plan involves the search for oil from an area offshore California. As stated above, the exploration, development and production of offshore oil and gas resources and a consideration of the effects of such activities on the resources of the coastal zone are among the objectives of the CZMA when such activities require Federal permits. Because the record shows that Appellant's amended Plan falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA, I find that the Appellant's project satisfies the first element of Ground I.

Second Element

To satisfy the second element of Ground I, I must find that:

> When performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.
> 15 CFR 930.121(b).

This element requires that I weigh the adverse effects of the objected-to activity on the natural resources of the coastal zone against its contribution to the national interest.

Adverse Effects

The two major adverse effects identified in the Administrative Record are those associated with the risk of an oil spill occurring during the proposed exploratory drilling and the risk of an oil spill from a vessel in the Santa Barbara Channel colliding with a drilling rig temporarily located in the buffer zone of the VTSS.[2]/

The Commission found that the Appellant's proposed exploratory drilling would adversely affect the endangered California brown pelican and its habitat on and near Anacapa Island by subjecting the species and its breeding and feeding grounds to the risk of harm from oil spills that could occur during exploratory drilling operations. Commission's Revised Findings 7-16. In support of this finding, the Commission cited studies demonstrating the special vulnerability of pelicans to harm from oil because pelicans will dive through oil slicks when feeding and are not as likely as other seabirds to avoid oil. According to the Commission, such studies indicate that pelicans encountering oil while feeding or bathing will bring oil back to the nesting colony. Oil is lethal to pelican eggs, and young pelicans coming into contact with oil are particularly susceptible to injury and death. Commission's Revised Findings 8. The Commission also cited the views of the FWS, the National Marine Fisheries Service (NMFS), the National Park Service (NPS) and the California Department of Fish and Game (DFG) in support of its finding that Appellant's drilling would adversely affect the endangered brown pelicans, and disputed the Appellant's claim that the Biological Opinion issued by the FWS pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1536) and related to oil and gas activities on OCS P-0203 endorsed the Appellant's amended Plan (Appellant's Supporting Statement 25). Commission's Response 26-29.

The FWS commented that "the proposed exploratory wells provide the potential for an oil spill in environmentally sensitive habitats," and stated that the oil spill trajectory analysis performed by the Appellant was based on data applicable to its production Platform "Gina" located closer to the mainland than Appellant's proposed drilling site. The FWS suggests that the "Gina" data may not be relevant to Appellant's proposed drilling site because Platform "Gina"

2/ The Commission has found that the Appellant's project will not conflict with commercial fisheries (Commission's Revised Findings 16); will meet State air quality standards (*Id.* at 21); and will comply with State policies regarding the disposal of drill muds and cuttings (*Id.* at 13, 27). The other adverse effects identified by the Commission (e.g., the potential adverse effects on an environmentally sensitive habitat) are associated with the risk of a major oil spill or the hazard to vessel traffic safety and are considered in connection with these potential adverse effects.

is in an area that has "reduced tidal circulation." 3/ The FWS concludes that "if Union Oil Company is willing to provide additional environmental protection to the sensitive marine habitats, it is possible some action can be taken," and suggests, inter alia, that an auxiliary supply vessel with additional oil spill containment equipment be anchored near the drilling rig. Commission's Response at Exhibit D, Attachment D, Letter from Field Supervisor, FWS, to Deputy Manager, Pacific OCS Region, MMS (June 9, 1982).

In its Biological Opinion, the FWS stated:

> It is difficult to predict from oil spill probabilities what the effects of oil activities might be on Anacapa. The only known incident of significant numbers of pelicans being oiled was after a spill from the Navy vessel Manatee in August 1973. Concentrations of light tar washed up on beaches fron San Clemente south into Mexico. Twenty to 25 juvenile pelicans were found oiled. In contrast, no pelicans were reported oiled as a result of the January 1969, Santa Barbara blowout. Judging only from location of the spills, the results should have been reversed, but timing was determinant in these cases. The San Clemente spills occurred in the late summer, when large numbers of pelicans were dispersed throughout the area; the Santa Barbara spill occurred in the winter, just following a severe storm, when relatively few pelicans were in the area and fewer still would have been far from shelter. While the breeding grounds and feeding areas surrounding Anacapa Island are extremely vulnerable locations, the San Clemente spill indicates that large amounts of oil anywhere within the pelicans' range could cause significant damage at the wrong time of year.

3/ The Appellant explained its procedure for determining the expected speed and movement of an oil spill during its proposed exploratory drilling operations as follows:

> In the vector addition analysis, data on mean monthly wind speed and direction for each month of the year were obtained from "A Climatology and Oceanographic Analysis of the California Pacific Outer Continental Shelf Region." Mean surface current speed and direction was taken from a "Climatic Study of the Near Coastal Zone, West Coast of the United States." Wind speed and direction for the Santa Ana winds were obtained from the Environmental Impact Report/Environmental Assessment for Union's Platforms Gilda and Gina prepared by Dames and Moore in October 1980. Appellant's Supporting Statement at Exhibit B, vol. 1, Oil Spill Contingency Plan, app. B, Oil Spill Risk Analysis B-12.

> We recommend that [MMS] require the lessee to assign a high priority and prescribe specific measures for the protection of Anacapa Island in all Oil Spill Contingency Plans submitted to [MMS] for exploration or development/production within the above listed tracts, and for activities that might result in substantially increased tanker traffic over the identified transportation routes. Appellant's Supporting Statement at Exhibit D, MMS Environmental Assessment, app. 1, FWS, Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 8.

The NMFS stated that it was concerned about exploratory drilling within the boundaries of the Sanctuary because of the proximity of the drilling site to East Anacapa Island, which is protected as a State Ecological Preserve and Area of Special Biological Significance under State law. NMFS recommended that "when exploring and developing an existing lease, to the extent possible, all work be conducted from outside sanctuary boundaries." Commission's Response at Exhibit D, Attachment C, Letter from Acting Regional Director, NMFS, to Deputy Manager, Pacific OCS Region, MMS (June 4, 1982).

The NPS also stated that it would be safer to conduct exploratory operations from outside Sanctuary boundaries, in order to protect the resources of the Sanctuary and the Park. The NPS expressed its concern that an oil spill might affect Anacapa Island, which it noted "remains the only viable nesting area for the California brown pelican within the United States." Id., Attachment C, Letter from Superintendent, Park, to Deputy Manager, Pacific OCS Region, MMS (June 9, 1982).

The DFG cited as its main concern the location of the proposed exploratory wells in proximity to the VTSS, creating a higher than usual risk of collision resulting in a major oil spill close to Anacapa Island. The DFG recommended the deletion of all lease tracts within six nautical miles of the Channel Islands, in order to provide a buffer zone between oil and gas exploration and development areas and areas containing valuable and delicate natural resources. Id., Attachment F, Letter from Director, DFG, to Commission (June 16, 1982).

The Commission further found that drilling the exploratory wells from a location within the southern buffer zone of the northbound traffic lane of the VTSS would create an unacceptably high risk to the safety of vessel traffic in the Santa Barbara Channel, primarily because of the proximity of the drilling rig to the "dog leg" turn of the VTSS. Commission's Revised Findings 18-21. The Commission cited the unanalysed data collected during the course of a study conducted by the California Maritime Academy in support of its assertion that locating a drilling rig in the buffer zone of the Santa Barbara Channel VTSS would increase vessel hazards. Commission's

Revised Findings 19-20.

In response, the Appellant argues that the risk of an oil spill from its exploratory operations is extremely low, and that it has proposed adequate measures to mitigate the effects of an oil spill should one occur. Appellant's Supporting Statement 37-40. In support of its position, the Appellant notes that since 1970 more than four billion barrels of oil have been produced from the OCS and that only 791 barrels have been lost as a result of well blowouts. The Appellant also states that no significant oil spill has occurred on the United States OCS from an exploratory drilling operation. Id. 37-38. The Appellant relies upon the oil spill risk analysis performed by the MMS in connection with its application for an exploration permit, based upon drilling data from the Gulf of Mexico for the period 1971-78. According to the analysis by the MMS, no oil spills occurred although seventeen gas blowouts resulted from 2,249 wells drilled during this period. MMS computed the probability of a blowout during the drilling of an exploratory well on the United States OCS at 0.0075. Appellant's Supporting Statement 38-39; Appellant's Exhibit K, MMS Oil Spill Risk Assessment 2-3; and Appellant's Exhibit B, vol. 1, Oil Spill Contingency Plan B-8.

The Appellant also maintains that the Biological Opinion issued by the FWS covering OCS P-0203 concludes that exploration activities may go forward provided that specific measures for protecting the California brown pelican and Anacapa Island are required by the MMS. Appellant's Supporting Statement 25.

In response to the Commission's finding that Appellant's exploratory drilling would create a high risk of harm to vessels transiting the Santa Barbara Channel, the Appellant denies that such a risk exists and states that the U.S. Coast Guard, the Federal agency responsible for vessel traffic safety, has approved its proposed exploratory drilling site. Appellant's Supporting Statement 10, 43-44.

I have considered the information submitted by the parties regarding the risk of an oil spill, including the potential adverse effects of a major oil spill on the pelicans and other seabirds, as well as the comments of the resource agencies responsible for the preservation of the California brown pelican and other living resources of the area.
I note that although the FWS, NMFS and the NPS all express concern about the effects of oil and gas activities on OCS P-0203 on such resources, none takes the position that the degree of risk from such activities should preclude any exploratory drilling. Commission's Response at Exhibit D, Attachments C, D and E; and Appellant's Supporting Statement at Exhibit D, app. 1, FWS Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 7-8.

Regarding the comment by the FWS that the "Gina" data may not be relevant to the Appellant's proposed drilling site, it is apparent that the data taken from the "Gina" assessment related only to the speed and direction of Santa Ana winds - data which is applicable to both the site of Platform "Gina" and the site of the Appellant's proposed exploratory drilling, less than four nautical miles away (see discussion, supra, p. 10 and n. 3). While I have little doubt that a major oil spill resulting from Appellant's exploratory activities on OCS P-0203 would threaten injury to the endangered California brown pelican and to its breeding, nesting and feeding grounds, I am persuaded by the information in the record of this appeal (particularly, the oil spill risk analysis submitted by the Appellant and the MMS) that the risk of an oil spill occurring during the Appellant's proposed exploratory drilling is very low, and, therefore, that the risk of injury to the endangered brown pelican and its habitat and to the other natural resources of the coastal zone is also very low, even without considering the mitigation measures to be employed by the Appellant in the unlikely event of an oil spill.

The Commission does not itself offer evidence to dispute the data contained in the oil spill risk analysis provided by the Appellant and the MMS, but argues: (1) that the analysis fails to consider the risk of an oil spill occurring as a result of a collision between the Appellant's exploratory drilling rig and a vessel transiting the VTSS, and (2) that any degree of risk of harm to the endangered California brown pelican and its habitat from the Appellant's proposed project is unacceptable. Commission's Response 19-29. I will consider the Commission's first argument in connection with the issue of vessel traffic safety, and its second when I weigh the adverse effects of Appellant's proposed exploratory drilling against its contribution to the national interest.

The degree of risk of a vessel transiting the Santa Barbara Channel colliding with a drilling rig temporarily located in the buffer zone of the Santa Barbara Channel VTSS was considered by the California Maritime Academy in connection with exploration activities conducted by Chevron U.S.A., Inc. on OCS P-0205 during the period from March 1 to May 14, 1983. Chevron's exploration activities were conducted in an area near the location of Appellant's proposed exploratory drilling on OCS P-0203 where the level of vessel traffic would be about the same. The study concludes in pertinent part:

> 4. A five hundred meter (500m) buffer zone adjacent to Traffic Lanes has been recommended by various sources. Based on the results of this study, under certain conditions drilling ships can be temporarily placed in this 500 meter buffer zone for exploratory drilling.

> ... Obviously, the longer the drillship remains in the buffer zone, the greater the danger of collision with approaching traffic. No place in navigable waters is fail-safe permanently from being struck by another vessel, but for relatively short periods of time this risk should be acceptable.
>
> California Maritime Academy, Santa Barbara Channel Vessel Traffic Study 44 (Feb. 1984).

The results of this study were not available to the Commission or its staff before the Commission objected to the Appellant's amended Plan on November 15, 1983. The conclusions reached by the California Maritime Academy do not support the findings of the Commission that locating Appellant's drilling rig in the buffer zone of the northbound traffic lane of the VTSS would create an unacceptably high level of risk to vessel traffic safety. Commission's Revised Findings 18-21.

Further, testimony by the U.S. Coast Guard before the Commission regarding the level of risk caused by locating Appellant's drilling rig in the buffer zone supports the Appellant's claim that its drilling operations may be carried out in a manner which will not interfere with vessel traffic in the VTSS. Appellant's Supporting Statement at Exhibit G, Transcript of November 15, 1983 Hearing 28-36.

As stated above, the record indicates that the U.S. Coast Guard has approved the Appellant's proposed drilling location in the buffer zone of the VTSS. Commission's Revised Findings 20; Appellant's Supporting Statement 10, 43-44. Further, Appellant proposes to conduct its drilling operations "in the shortest feasible time." Appellant's Supporting Statement 16. Therefore, considering the Appellant's proposed period of drilling, the U.S. Coast Guard's approval of the Appellant's drilling location and the California Maritime Academy's conclusion that the risk to vessel safety from locating a drilling rig in the buffer zone of the VTSS is acceptable "for relatively short periods of time," I find that the Appellant's proposed drilling activities will not have a significant adverse effect on vessel traffic safety in the VTSS. Relatedly, I find the risk of an oil spill as a result of a collision between Appellant's drilling rig located in the buffer zone and a vessel transiting the VTSS to be very low.

Regarding the cumulative adverse effects of the Appellant's proposed exploratory drilling, I note that the regulations implementing the designation of the Sanctuary prohibit the exploration, development and production of oil and gas resources on OCS tracts within the six nautical mile buffer zone around the islands of the Sanctuary that were leased on or after March 30, 1982, the effective date of the regulations. The regulations permit such hydrocarbon exploration and development activities on the five tracts that were leased before this date, subject to the control of Federal and State agencies concerned with oil and gas exploration and development on the OCS. 47 Fed. Reg. 18588 (1982). Although the Commission has previously allowed oil and gas exploration activities to be conducted on two tracts located within or near the boundaries of the Sanctuary, no exploration activities are currently in progress within the Sanctuary. Commission's Revised Findings 4. Therefore, because no oil and gas exploration or development activities may be carried out on all but five OCS lease tracts within the boundaries of the Sanctuary, and no such activities are currently in progress, I find that Appellant's proposed exploratory drilling will not cumulatively cause adverse effects on the natural resources of the coastal zone.

Contribution to the National Interest

Commerce regulations indicate that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by Federal agencies. 15 CFR Part 923, 44 Fed. Reg. 18608 (1979). Commerce sought the views of certain Federal agencies concerning the national interest in the Appellant's proposed exploratory drilling on OCS P-0203. The views expressed by Federal agencies regarding the national interest in this project are summarized below:

The Department of the Treasury commented that "although the benefits of an individual project are difficult to quantify, the effects even though small are favorable." The Department also believes that the Appellant's exploratory activities add to our knowledge of the national petroleum reserve base. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (March 14, 1984).

The Department of Energy stated that the Appellant's exploratory activities are in the national interest because such oil and gas activities help reduce our dependence on foreign oil. The Department noted that even maintaining the current ratio of imported to domestic oil will require that new domestic reserves be identified at an increasing rate. Letter from William A. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (March 20, 1984).

The Department of Labor commented that although the Appellant's project would serve the national interest by creating jobs, "the magnitude of this particular development is not large enough to affect substantially our national economic situation." Letter from Daniel K. Benjamin, Acting

Assistant Secretary for Policy, to John V. Byrne, Administrator, NOAA (Apr. 6, 1984).

The Department of Transportation commented that there would be no conflict between the Appellant's exploratory drilling at its proposed site and the national interest in navigation safety. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (March 20, 1984).

Interior stated that the Appellant's exploration activities are necessary to develop the oil and gas reserves of the Hueneme Field, and that development of these reserves serves the national interest in achieving a greater degree of energy self-sufficiency. The Department also noted the expenditures resulting from development associated with the Appellant's exploration plan, which it estimated to be more than $96 million. Revenues would accrue to the Federal and State governments; employment opportunities during the construction and development stages of the project would be created; and the United States balance of trade would be improved. Letter from William Clark, Secretary of the Interior, to John V. Byrne, Administrator, NOAA (May 9, 1984).

The Appellant maintains that its exploratory drilling on OCS P-0203 serves the national interest expressed in both the CZMA and the Outer Continental Shelf Lands Act Amendments of 1978 in attaining energy self-sufficiency, thereby reducing dependence on foreign oil. Appellant's Supporting Statement 31-34. The Appellant estimates that the field to be delineated by its proposed exploratory drilling contains at least 31 million barrels of recoverable oil, worth approximately $930 million, assuming an average price of $30 per barrel over the life of the field. The Appellant also asserts that its exploratory drilling is a necessary step in bringing the field into production, and will lead to the creation of jobs during the drilling and development phases of the project, and to the payment of royalties and taxes to the Federal Government. Id. The Commission agrees that OCS oil and gas exploration and development contributes to the national interest by reducing dependence on foreign oil sources, favorably affecting the balance of payments and creating jobs. Therefore, based on the information in the record, I find that Appellant's exploration of the field known to exist on OCS P-0203 contributes to the national interest in attaining energy self-sufficiency.

But the Commission argues that there also is a "substantial national interest in environmental protection and the continued viability of the endangered brown pelican." Commission's Response 17-18. I agree with the Commission that there is an important national interest in protecting the endangered California brown pelican and its habitat on or near Anacapa Island, and this national interest is served by the actions of the State of California in designating the area as an

Ecological Preserve and an Area of Special Biological Significance, and by the Federal Government in classifying the California brown pelican as endangered under the Endangered Species Act, in creating the Channel Islands National Park and in establishing a national marine sanctuary around the Santa Barbara Channel Islands, including Anacapa Island, pursuant to Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

Weighing

Having identified both the potential adverse effects on the natural resources of the coastal zone which may be caused by Appellant's drilling operations and the national interest served by such a project, I am required to decide whether the project's adverse effects are substantial enough to outweigh its contribution to the national interest (15 CFR 930.121(b)). The Administrative Record indicates that the only serious adverse effects that could be caused by the Appellant's exploratory drilling are those associated with the risk of a major oil spill from the proposed exploratory drilling activities or from a passing ship colliding with the drilling rig. To reiterate, I have already found the risk of an oil spill from Appellant's proposed drilling operations and the related risk of injury to the endangered brown pelican and its habitat to be very low (_supra_, p. 13), and that the risk of an oil spill from a passing ship colliding with a drilling rig located in the buffer zone of the VTSS for a relatively short period of time is also very low (_supra_, p. 14). I also have found that the Appellant's project contributes, at least modestly, to the national interest by delineating a field estimated to contain approximately 31 million barrels of recoverable oil (_supra_, p. 16), and I have recognized that there is a national interest in protecting the endangered brown pelican and its habitat (_supra_, p. 16). Before weighing these matters, I must consider whether, as argued by the Commission, any degree of risk of harm to the pelican and its habitat, however low, is unacceptable and perforce outweighs any contribution, however large, Appellant's project might make to the national interest.

To analyze whether any risk of harm to the pelican and its habitat is acceptable, I have considered this Department's actions when it designated the Sanctuary, as well as the Commission's views at the time of Sanctuary designation. Providing protection for the endangered brown pelican, other seabirds and their habitat was one of the major reasons cited by this Department for establishing the Sanctuary. Final Environmental Impact Statement on the Proposed Channel Islands Marine Sanctuary (FEIS), Sections E.2.b. and F.2.; and Article 3 of the Sanctuary Designation Document (45 _Fed. Reg_. 65203 (1980)). To ensure that the living resources of the Sanctuary were not threatened because of the expanding oil and gas exploration and development activities in nearby areas of the Santa Barbara Channel, a buffer zone of six nautical miles around the Santa Barbara Channel Islands was established. FEIS, Section F.2.1.; and Article 2 of the Sanctuary Designation Document (45 Fed. Reg. 65203 (1980)). Within the buffer zone, no hydrocarbon exploration and development activities on OCS tracts leased after the effective date of the applicable regulations are permitted, although such activities on tracts leased before the effective date of the applicable regulations are allowed, subject to any conditions imposed by Federal and State agencies, including the Department of the Interior and the Commission, the latter acting pursuant to its consistency review authority under the CZMA.[4]

Although it is evident that the purpose of restricting hydrocarbon activities is to protect the "sensitive living resources" of the Sanctuary, it is also clear that no absolute ban on exploration and development activities on preexisting leases was intended. FEIS, Section F.2. c. 1. Decisions to permit such activities on preexisting leases were left to Federal and State agencies "for case by case determination, evaluating all information available." FEIS, Section G at G-27. As explained in the FEIS:

> The proposed regulations on hydrocarbon exploration and development strike a balance between imposing economic costs and achieving environmental protection. The proposed regulations protect the sanctuary resources from possible major expansion of oil and gas development, but permit development of the tracts in which the oil and gas industry has already invested. FEIS at Section G at G-38.

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[4] The regulations at 15 CFR 935.6 governing "hydrocarbon operations" within the Sanctuary provide, inter alia:

> (a) Hydrocarbon exploration, development and production pursuant to any lease executed prior to the effective date of these regulations and the laying of any pipeline is allowed subject to paragraph 935.6(b) and to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.
>
> (c) Hydrocarbon exploration, development and production activities pursuant to leases executed on or after the effective date of these regulations are prohibited.

[The regulations governing hydrocarbon activities became effective March 30, 1982 (47 Fed. Reg. 18588 (1982)).]

Although the Commission argues in this appeal that no degree of risk of harm to the pelican is acceptable, and, therefore, opposes any exploratory activity on Appellant's preexisting lease, the Commission recommended at the time the Sanctuary was established that hydrocarbon activities be permitted on existing leases subject to the following criteria:

> 1. The lease operator must have first explored the adjacent leased area outside the buffer zone, with results indicating the likelihood of an oil or gas field extending within the buffer zone;
>
> 2. The purpose of the exploration within the buffer zone must be to determine the extent of the field and how much of the resources may feasibly be produced from a platform outside the six nautical mile limit;
>
> 3. No oil and gas development and production activities would be permitted within the buffer zone; and
>
> 4. Production of petroleum resources within the buffer zone would take place only from facilities located outside the boundary which employ slant drilling. FEIS, Section G at G-26-27; Commission's Revised Findings 3-4.

The Commission stated that it would apply these criteria in reviewing OCS exploration plans for consistency with the CCMP. Letter from Michael L. Fischer, Executive Director, Commission, to JoAnn Chandler, Director, Sanctuary Programs Office, NOAA (Feb. 1, 1980). Although the Commission's recommendations regarding permitting exploration activities on preexisting leases were not accepted by NOAA when the Sanctuary was designated, the Appellant argues and it would appear that its proposed exploration on OCS P-0203 meets all of the limiting conditions initially proposed by the Commission. Appellant's Supporting Statement 21-22.

I am required by 15 CFR 930.121(b) to weigh the adverse effects on the natural resources of the coastal zone against the contribution of the proposed activity to the national interest. While the potential adverse effects associated with the low risk of harm to the endangered brown pelicans that would be presented by the Appellant's proposed project must be included in my weighing, the existence of a low risk of harm to an endangered species does not mean, as the Commission argues, that the adverse effects automatically outweigh any contribution to the national interest.

The Commission determined that the mitigation measures proposed by the Appellant in its amended Plan concerning oil spill containment, cleanup and response procedures, as well as the Appellant's agreement to dispose of drill muds and cuttings on land if required by the Commission, represent the maximum mitigation feasible according to Section 30260 of the CCA (supra, p. 4). Commission's Revised Findings 26-27. Further, the U.S. Coast Guard and the MMS have approved the Appellant's Oil Spill Contingency Plan and described it as state-of-the-art in terms of mechanical equipment and chemical dispersants proposed to be used and its containment and clean-up response strategies based on varying weather and sea conditions. Appellant's Supporting Statement 42. In addition, the contingency plan proposed by the Appellant contains site-specific oil spill trajectory data indicating a very low probability that an oil spill from OCS P-0203 would contact Anacapa Island during the months of November, December and January, the period during which the Appellant would conduct its exploratory drilling. Appellant's Supporting Statement 40-41; and Appellant's Exhibit B at vol. 1, Oil Spill Contingency Plan B-11-43. The record in this appeal indicates that, although adult pelicans are present in the area of Anacapa Island throughout the year, the number of pelicans in the area would be lowest during this period, that nesting would not be in progress and that pelican fledglings would not be present. Appellant's Supporting Statement 24-25.

Therefore, based on the information in the record, I find that the Appellant's project is consistent with the national interest in protecting the California brown pelican and its habitat because of the low level of risk of an oil spill or risk of injury to the pelicans and their feeding, nesting and breeding grounds occurring during the Appellant's exploratory drilling operations; the Appellant's commitment not to construct development platforms within Sanctuary boundaries; and the mitigation measures proposed by the Appellant, in addition to the Appellant's agreement to conduct its exploratory drilling during the months of November, December and January, when the pelican population is lowest. Finally, when I weigh the low level of risk of an oil spill and the low level of risk of injury to the brown pelicans and their habitat and to other natural coastal resources from the Appellant's project against its contribution to the national interest in attaining energy self-sufficiency, I find that the Appellant's exploratory drilling on OCS P-0203, as proposed in its amended Plan, will not cause adverse effects on the resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

Third Element

To satisfy the third element of Ground I, I must find that:

> The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.
> 15 CFR 930.121(c).

The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated in all State coastal programs approved under the CZMA. Section 307(f) of the CZMA.

The Clean Water Act

The Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended (the Clean Water Act), provides that the discharge of pollutants is unlawful except in accordance with a National Pollution Discharge Elimination System (NPDES) permit issued by the Administrator of the Environmental Protection Agency (EPA). Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342.

The general NPDES permit covering discharges from oil and gas facilities operating on OCS P-0203, including the disposal of drill muds and cuttings, expired on June 30, 1984. The EPA is developing a new general NPDES permit incorporating effluent limitations reflecting the Best Available Technology Economically Achievable which, according to the EPA, should be at least as stringent as the earlier permit. The EPA has stated that the Appellant's operations will comply with the Clean Water Act, provided that the terms and conditions of the new general NPDES permit are met. Letter from William D. Ruckelshaus, Administrator, EPA, to John V. Byrne, Administrator, NOAA (April 24, 1984).

The Commission has found that Appellant's agreement to dispose of drill muds and cuttings as required by the Commission represents the maximum feasible mitigation under State law, and, therefore, with regard to the disposal of drill muds and cuttings, that the proposed project is consistent with Section 30260 of the CCA. Commission's Revised Findings 12-13, 27.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting the terms and conditions of the new NPDES permit, I find that the Appellant's proposed activity will not violate the requirements of the Clean Water Act.

The Clean Air Act

The Clean Air Act, 42 U.S.C. §7401 et seq., directs the Administrator of the EPA to prescribe national ambient air quality standards for air pollutants to protect the public health and welfare. Both the EPA and Interior have commented that Appellant's project will be conducted in compliance with the Clean Air Act. Letter from William D. Ruckelshaus to

John V. Byrne, supra; and letter from Garrey E. Carruthers, Assistant Secretary for Land and Minerals Management, Interior, to John V. Byrne, Administrator, NOAA (May 1, 1984). The Commission found that Appellant's project satisfies Section 30253(3) of the CCA, which requires that such development projects be consistent with the standards of the State Air Resources Board, and Section 307(f) of the CZMA. Commission's Revised Findings 21.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting all relevant standards of the Clean Air Act, I find that the Appellant's proposed activity will not violate any requirement of the Clean Air Act.

Fourth Element

To satisfy the fourth element of Ground I, I must find that:

> There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal zone] management program.
> 15 CFR 930.121(d).

Although the Commission maintains in its Response that it lacks "adequate information to be able to demonstrate that an appropriate [drilling] site outside the shipping lanes and Marine Sanctuary can be found" (Commission's Response 32), the Commission found in support of its consistency objection to Appellant's project that:

> [T]here is no feasible way in which Union could site or design its project to avoid impacts on the environmentally sensitive habitat areas[; and]
>
> Alternative locations to drill the two wells require slant drilling at an angle considered unsafe, or at a location within the sea lane presenting an even greater potential risk of collisions between drillship and other vessels. Drilling any further from the oil field being delineated would not yield the data Union needs to determine whether sufficient oil and gas reserves exist to justify installation of a platform. For these reasons, the Commission finds that alternative locations are infeasible and less desirable.
> Commission's Revised Findings 14, 23.

Based on the record in this appeal, and particularly in reliance upon the findings of the Commission, I find that there are no reasonable, available alternatives to Appellant's proposed project that would permit the Appellant to conduct the project consistently with the CCMP.

Conclusion for Ground I

On the basis of the findings I have made above, I find further that the Appellant has satisfied the four elements of Ground I, and, therefore, that the Appellant's proposed project, although inconsistent with the CCMP, is nevertheless consistent with the objectives of the CZMA.

Ground II: National Security

The second statutory ground (Ground II) for sustaining an appeal requires that I find that the activity is "necessary in the interest of national security." To make this finding, I must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed," and I must seek and accord considerable weight to the views of the Department of Defense and other Federal agencies in determining the national security interests involved in a project, although I am not bound by such views. 15 CFR 930.122.

Although the Appellant asserts that its project is "necessary in the interest of national security," it has declined to present evidence supporting this ground of its appeal, stating that it is "factually ill-equipped to argue the point, and defer[s] to the advice of the relevant [Federal] agencies." Appellant's Supporting Statement 4.

The Commission argues that the Appellant has not provided any evidence demonstrating that the Commission's objection preventing the Appellant's exploratory drilling "significantly impairs" the national defense or other national security interest or that the proposed project "directly supports" a national defense or security interest. The Commission maintains that a finding in this appeal that any exploratory drilling on the OCS is in the national security interest would be tantamount to an automatic Federal veto over a State's consistency objection to an exploration plan pursuant to Section 307(c)(3) of the CZMA. Commission's Response 6-9.

The views of the Departments of Defense, Energy, the Interior, Labor, State, Transportation and Treasury were solicited concerning the national security interest served by the Appellant's exploratory drilling, and are summarized below:

The Department of Defense commented that the Appellant's proposed project "may contribute to reducing [U.S.] dependence on foreign petroleum sources." Letter from Caspar W. Weinberger, Secretary of Defense, to John V. Byrne, Administrator, NOAA (March 27, 1984).

The Department of Energy stated that exploration for new domestic sources of oil is necessary to reduce dependence on foreign sources, and found Appellant's project in the national defense and security interest. Letter from William A. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (March 20, 1984).

Interior commented that the Appellant's exploration project would increase domestic production which is "easier to defend than oil from foreign sources," would lower the United States' oil allocation to the International Energy Agency, and would lessen the need to draw down the Strategic Petroleum Reserve during an oil disruption. Interior believes that failure to develop Appellant's reserves would result in a significant impairment of the national defense and security interest. Letter from William Clark, Secretary of the Interior, to John V. Byrne, Administrator, NOAA (May 9, 1984).

The Department of Transportation stated that increased domestic production would enhance national security by reducing dependence on foreign oil. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (March 20, 1984).

The Department of the Treasury commented that exploration and subsequent development of domestic energy sources serves the national security interest by reducing dependence on foreign energy. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (March 14, 1984).

The Appellant has stated that its project is in the national security interest because it reduces dependence on foreign sources of oil. Appellant's Supporting Statement 31-34. But the Appellant has not explained how the national security interest served by attaining energy self-sufficiency would be "significantly impaired" if its project is not permitted to go forward as proposed. Interior commented that failure to develop the Appellant's oil reserves of approximately 31 million barrels would "significantly impair" the national security interest, but the Department of Defense, the agency principally concerned with national security, and none of the other Federal agencies submitting comments identified any national security interest directly supported by Appellant's exploratory drilling that would suffer significant impairment if the project could not be carried out as proposed.

Conclusion for Ground II

Although I have found in an earlier consistency appeal that the development of proven oil and gas reserves in the Santa Ynez Unit (SYU) on the order of 300-400 million barrels of oil and 600-700 billion standard cubic feet of gas is in the national security interest (supra, p. 8), I decline to find that exploratory drilling to delineate a known field estimated to contain only one-tenth as much oil as the SYU directly supports national defense or security objectives, and that such interests will be significantly impaired if the drilling cannot go forward as proposed, when no such interests have been identified by the Department of Defense. Therefore, based on the evidence in the record, I find that the requirements of Ground II for sustaining the appeal have not been met.

Conclusion

Because I have found that the Appellant has satisfied the first of the two grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the Commission, the Appellant's project, as described in its amended Plan and subject to all the conditions and limitations proposed by the Appellant, may be permitted by Federal agencies.

Malcolm Baldrige
Secretary of Commerce

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